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The St. Louis Court of Appeals has recently rendered an opinion of very general interest, involving the application and construction of the Missouri anti-trust law. One section of the Act of 1891, of that State, provides that "any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act, shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment." The court held in substance that a trust cannot cloak its objects under the form of a corporation and evade the penalties provided by the anti-trust law. Under this decision accounts with trusts operating as corporations in Missouri are not collectible. The suit was by the National Lead Company against the S. E. Grote Paint Store Co. for balance due on account. The defense was that the plaintiff was a trust formed to control prices, in violation of the provisions of the anti-trust law. On a trial below the plaintiff got judgment. The Court of Appeals reverses and remands the case. The evidence showed that the National Lead trust was organized in 1887 to control the lead business of the country. It continued under the trust form of organization until 1891, at which time it had absorbed thirty companies in the United States and Mexico engaged in the paint and lead business.

In 1891, following the enactment in Missouri of legislation adverse to trusts, it was organized in the form of a corporation under the name of the National Lead Company.

The attorneys for the National Lead Company contended, in the trial of the case, that the defense set up by the attorneys of the S. E. Grote Paint Store Company could not stand because the National Lead Company was a corporation, not a trust. They argued to the Court of Appeals that the trial court had erred in admitting evidence of the objects of the corporation—in other words, evidence tending to show that it was a corporation organized to control prices as a trust.

It was also claimed that the company, having a charter from the State, could only be proceeded against in the name of the State and not by an individual.

The opinion of the Court of Appeals written by Judge Bond and concurred in by all the members of the court, is lengthy and exhaustive.

"The crucial question in this case," says Judge Bond, "is whether the plaintiff corporation either in its organization or business operations in this State, has offended any of the provisions of its law? That the predecessor of the plaintiff, the 'National Lead Trust,' was an unlawful combination, both in purpose and fact, is sufficiently established by the nature of the agreement under which it was created and the methods and practices resorted to in furtherance of that agreement. The agreement in question can only be construed as a contract to suppress competition, fix the price of commodities and limit their production, and to restrain trade. Unless some one or all of these purposes had been entertained by the signers of the trust agreement, it would not have contained provisions looking to the acquisition by the trustees of the entire lead business of the country, nor would it have united in the accomplishment of that end a majority of the stockholders of the largest corporations dealing in that product. That it had these objects in view and practically accomplished them, is evident from the fact that it started with a contract of eight corporations and terminated after having issued ninety million of trust certificates, and after it formed a combination of thirty corporations, constituting a large majority of the lead dealers of the country who had united themselves together in the effort to realize dividends upon the aforesaid capitalization out of assets of less than one-fourth in value of the amount for which trust certificates had been issued. While the conclusion of the illegal purpose of the trust agreement is irresistible upon a consideration of its several provisions and the manner in which they were carried out, it will appear from an examination of the cases that this result had been declared by every court called upon to

review that agreement, or others substantially like it. State v. Standard Oil Company, 49 Ohio St. 137; Distillers, etc. Company v. The People, 156 Ill. 448; Bishop v. A. Preserving Co., 157 Ill. *l. c.* 311; People v. N. R. S. R.Company,121 N. Y. 582; Unckles v. Colgate, 148 N. Y. 529; U. S. v. Freight Assoc., 166 U. S. 290; U. S. v. Joint Traffic Assn., 171 U. S. 505. But the illegality of the organization and operation of the National Lead Trust does not involve the conclusion that the purchaser of its assets, whether a natural or artificial person, succeeded also to the *status* of that illegal combination under the laws enacted in this State for the punishment of pools, trusts and conspiracies. For the mere purchase by one of the assets which another has employed for an illegal purpose does not of itself imply that they will be used by the purchaser for the purpose of effectuating the objects to which they had been devoted by the seller. Such an intent on the part of the purchaser, if inferable, must be gathered from proof of all the circumstances characterizing the transaction, as well as his subsequent conduct. As to these sources of proof, the record in the case under review shows that the beneficial owners of the property were the subscribers to the National Lead Trust and holders of its certificates, and that these same persons remained the beneficial owners of the same property after it was converted into the capital of the plaintiff corporation, the only difference being that each holder of a trust certificate received in lieu thereof shares of stock in the new corporation at an agreed rate of exchange, and the further fact that the legal title to the property was put into a corporate entity instead of a body of nine trustees appointed under the trust agreement. The sale itself was titular, rather than real."

Upon the question whether the mere fact of the plaintiff's corporate charter exempts it from the application of the law prohibiting combinations and trusts, the court says: "The first section of the act of 1891, *supra*, provides that any corporation wherever created which is 'organized to do business in this State, or any * * * individual or other association of persons whatsoever who shall create, enter into, become a member of or a party to any pool, trust agreement, combination, confederation or understanding with any other corporation, * * * individual, or any person or association of persons, to regulate or fix the price of any article of merchandise or commodity, "or in the same manner" to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, "shall be deemed and adjudged guilty of a conspiracy to defraud, and be subjected to penalties as provided in this act." ' Can it be rationally held that the legislature had in view the commission of the criminal offense created in the foregoing section by a corporation as such, separate and apart from the individuals composing it? There is no legal ground upon which such a view can be entertained. A corporation can only act through its members or their agents. The corporate entity with which the law clothes it for special purposes is not self-acting, hence there was no thought of its action only, in the mind of the framers of the statute. The evident purpose of the legislature was to specify certain acts, which, if done by its stockholders or governing bodies, should constitute a crime on the part of the corporation. It did not contemplate the commission of an offense by an impalpable abstraction, which could neither think nor act; but it intended to bind this corporate entity by the imputed actions of its human agencies. In other words, the legislature referred to the corporation in its true essence as an association of persons without which it could not exist, and through whom alone it must perform all its functions as a corporate being. Morawitz on Corporations, section 227; Taylor on Corporations, section 51; State v. Standard Oil Company, 49 Ohio St. 137; Buffalo Oil Company v. Standard Oil Company, 106 N. Y. 669; Boogher v. Life Association of America, 75 Mo. 319. Hence it must follow that if the stockholders and governing officers of the plaintiff corporation combined with each other to violate any of the provisions of the section under review through the instrumentality of their corporate entity, then the corporation composed by them was a party to such illegal combination within both the letter and the spirit of the above section of the Act of 1891. Or correctly stated, that a combination which is illegal under the anti-

trust law cannot be operated under the cloak of a corporation, and by its constituent members or governing bodies. This conclusion is believed to be irresistible in reason and has received the unwaivering support of the courts and the text-writers. Ford v. Milk Shippers' Assn., 155 Ill. 166; People v. Gas Company, 130 Ill. 275; Distilling Company v. People, 156 Ill. 448; Strait v. National Harrow Company, 18 N. Y. Supp. 224; Beach on Monopolies, section 158; Hirsch on Com. Corp., p. 86; Am. Biscuit and Mfg. Co. v. Klotz, 44 Fed. Rep. 723; National Harrow Company v. Quick, 67 Fed. Rep. 130; Merz Capsule Co. v. U. S. Capsule Co., 67 Fed. Rep. 414. In the case of Ford v. Milk Shippers' Association, *supra*, the members of a milk trust, subsequently incorporated, brought an action against a purchaser of the commodity sold by the corporation, who defended on the ground that it was formed in furtherance of a trust scheme, and transacting business in contravention of an anti-trust act substantially the same as that pleaded in defendant's answer in the present action. It was insisted for the plaintiff that being a corporation it could not violate the statute, to which defense the Supreme Court of Illinois answered as follows: 'The corporation, as an entity, may not be able to create a trust or combination with itself, but its individual shareholders may, in controlling it, together with it, create such trust or combination that will constitute it, with them, alike guilty.' The point in judgment in that case is identical with the issue presented in the one before us. The conclusion reached by the Illinois court is logical, fully sustained by the above and other authorities, and in exact accord with the views heretofore expressed in this opinion."

NOTES OF IMPORTANT DECISIONS.

MUNICIPAL BONDS—VALIDITY UNDER LAWS OF TEXAS—FOLLOWING STATE DECISIONS.—It is held by the Supreme Court of the United States, in Wade v. Travis County, 19 S. C. Rep. 715, "that it is the law of Texas, as settled by the decisions of its supreme court, that the provision of the State constitution (article 11, § 7) that 'no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made at the time of creating the same for levying and collecting a sufficient tax to pay the interest thereon and to provide at least two per cent. as a sinking fund' is complied with as to bonds issued by a county in payment for bridges built therein as authorized by the act of the legislature (Laws 1887, ch. 141) by the provisions of the act itself, which imposes the duty on the county authorities of levying and collecting an annual tax sufficient to pay the interest on such bonds, and to create a sinking fund of not less than 4 per cent. of the full sum for which bonds have been issued; and that the actual levy by the county of the required tax at the time a contract for a bridge, to be paid for in bonds, is entered into, is not essential to the validity of the bonds; and that the laws of a State, which the courts of the United States are required by Rev. Stat. § 721, to follow as rules of decision in trials at common law, are to be determined by the latest settled adjudications of the highest court of the State, rather than by earlier ones, where there is any inconsistency between them (unless rights acquired on the faith of the former decisions are involved), and in case a construction has been placed on a State law, or constitutional provision, by its highest court, different from that previously given it by a federal court, though the latter may have followed a former State decision, the supreme court, in passing upon the case in review, will apply the law as determined by the subsequent holding of the State court."

ASSIGNMENT FOR BENEFIT OF CREDITORS—SECURED CREDITORS—SURRENDER OF COLLATERALS.—It is held by the Supreme Court of Appeals of West Virginia, in the case of Williams v. Overholt, 33 S. E. Rep. 226, that creditors secured by a general assignment of their debtor's estate are entitled to present participation in the general funds arising from such assignment, although they may hold collateral securities on their debts. They cannot be required to surrender such securities until their debts are fully satisfied. Nor can they be refused participation in the general fund until such securities are exhausted; and that the trustees, debtor or other creditors interested have the right to redeem such collateral securities by the payment of the secured debts in full; and a court of equity, having jurisdiction of the debtor's estate for distribution, may compel the surrender of such collaterals, or any balance thereof remaining after full satisfaction of the secured debts. The court says in part:

"The law governing the question involved is well stated in the opinion of Gray, J., in the case of People v. E. Remington & Sons, 121 N. Y. 336, 24 N. E. Rep. 795, as follows: 'In this country we find that rule more generally prevailing which allows the creditor holding securities to prove and receive his dividend on the whole debt. It is asserted in Judge Story's work on Equity Jurisprudence (section 524), and in the following cases: *In re* Bates, 118 Ill. 524, 9 N. E. Rep. 257; West v. Bank, 19 Vt.

403; Moses v. Ranlet, 2 N. H. 488; Findlay v. Hosmer, 2 Conn. 350; Logan v. Anderson, 18 B. Mon. 114. *In re* Patten's Appeal, 45 Pa. St. 151, it was held, in relation to an assignment made for creditors, that the unsecured creditor has no right to the benefit of the securities held by another creditor until the other's whole debt was paid. In Allen v. Danielson, 15 R. I. 480, 8 Atl. Rep. 705, which was a case arising under an insolvent assignment, Durfee, C. J., delivering the opinion of the court, said: "According to the decided weight of authority, the rule is to allow creditors to bring in their claims in full, and have dividends accordingly." That opinion is both well considered and able, and it deliberately overruled a prior decision of the court in the case of *In re* Knowles, 13 R. I. 90. * * *' Collateral securities not given or received as a satisfaction or postponement of the debt do not hinder the creditor, without a contract to the contrary, from making his debt out of any other property of the debtor; and, when the debtor has made a general assignment for the benefit of all his creditors, the secured creditor has the right, notwithstanding the collaterals held by him, to present his debt, and receive his *pro rata* share of the assets, and, if such share is sufficient to pay the indebtedness in full, then the collaterals are redeemed, and returned to, and become a part of, the debtor's estate; but, if such share is not sufficient to satisfy such indebtedness in full, the secured creditor has a right to such collaterals until he receives satisfaction, either out of such collaterals, or from the debtor or the others interested. The right of redemption remains in the debtor, and by general assignment passes to his assignee for the benefit of his creditors. The rule in bankruptcy is different from this common-law equity rule—made so by statutory provision that the secured creditor, if he would prove up his own debt, must surrender his collaterals; and it may be that the statutory provisions of some of the different States are to the same effect. In this State the common-law rule prevails, as above set forth. In 14 Am. & Eng. Enc. Law, 696, the law is stated to be that 'marshaling will not be enforced if the paramount creditor is materially delayed or hindered in the collection of his debt, nor will it be enforced if any part of the paramount debt remain unsatisfied.' Evertson v. Booth, 19 Johns. 486. And on page 698: 'If the assets of a debtor are insufficient to satisfy all of his debts, a creditor who has a right to resort to a fund open to himself alone is not precluded from claiming from the fund of the estate which is open to all creditors a dividend on the full amount of his debt. He is not limited merely to a dividend on the balance, but the total received by him cannot exceed the sum due.' Equity has the same rights with regard to the collateral that the debtor has, and no greater. It cannot compel the surrender of the same until the secured debt is satisfied, nor can it prevent the secured creditor from participating in the general distribution of the debtor's estate to the amount of his debt. The circuit court therefore erred in this case in refusing the secured creditors present participation in the general distribution of the debtors' estate, and in requiring such creditors to proceed to collect and apply the collaterals to the payment of their debts before such participation should be consummated."

REAL ESTATE BROKER—EXCHANGE OF PROPERTY—RIGHT TO COMMISSIONS.—In Friar v. Smith, decided by the Supreme Court of Michigan, it appeared that on an issue whether real estate brokers, suing to recover a commission for effecting an exchange of property, who had stipulated for a commission from both parties, were agents for both parties, so as to forfeit their right to compensation, or merely middlemen, the court charged that no recovery could be had if the contract was one of agency, instead of that of middlemen; that the brokers claimed that all they agreed to do was to find a man willing to make the trade, and that defendant claimed that they agreed to take the property and do the best they could with it, and that, if defendant's contention was true, the brokers could not recover commissions, unless defendant knew, before employing them, that they had stipulated for commissions from the other party. It was held that the instruction was sufficient. The court said in part:

"The plaintiffs are real estate brokers. This action is brought to recover a commission claimed to be due from defendant for introducing him to another customer of plaintiff's with whom defendant made an exchange of property. The plaintiff, James Friar, on the trial at the circuit, testified that he told the defendant that he had certain farms in his hands which the owner desired to exchange for city property, and that defendant agreed with him that, if he (Friar) would bring him (defendant) a customer with whom he could make a deal, a commission would be paid. The witness also testified that the defendant was at the time informed that the plaintiffs also expected a commission from the other party to the transaction. This testimony was corroborated by other witnesses. It appeared in the case that the plaintiff, James Friar, had given a somewhat different version of the transaction in the justice court; that he omitted to state that defendant was informed that plaintiffs expected a commission from the other party; and that he testified in justice court that defendant's promise was to pay a commission to any one who made a deal for him. The defendant denied any agreement to pay commissions at all, and denied that he was told that plaintiffs were to receive a commission from the other party to the trade. It appeared that plaintiff subsequently introduced to defendant, one Hanrahan, who owned two farms near Grand Rapids, and that an exchange was made by defendant of his property for one of these

farms. The witness, James Friar, testified that his arrangement with Hanrahan was identically the same as with defendant. The defendant's contention apparently twofold: (1) That he made no agreement to pay commissions, but dealt with plaintiffs as agents of Hanrahan; (2) that, if the jury should find an agreement to pay commissions, the evidence given in justice court by plaintiff disclosed a contract against public policy, and that for this reason plaintiff was not entitled to recover.

"A number of exceptions were noted to rulings on admission of testimony, which we have examined, but do not discuss at length, as we are convinced that no damaging error was committed in this regard. The rules of law applicable to this class of cases are briefly stated: (1) An agent to sell may not become the agent of the purchaser, nor may an agent to buy become the agent to sell, unless the principals are duly acquainted with the fact that the agent is acting in such dual capacity. Mechem, Ag. sec. 943; Scribner v. Collar, 40 Mich. 375; Leathers v. Canfield (Mich.), 75 N. W. Rep. 612. (2) If, however, both principals, with full knowledge, consent that the agent act on behalf of both, the agreement for compensation is binding. See cases cited above. (3) Defendant, who knows that his agent expects a commission, may defeat recovery by showing that the other principal of the agent is unaware of the fact of such double agency, and this on the ground that the parties have engaged in a transaction against public policy. The law will not enforce their contracts, but will leave them where it finds them. Rice v. Wood, 113 Mass. 133; Rice v. Davis, 136 Pa. St. 439, 20 Atl. Rep. 513; Everhart v. Searle, 71 Pa. St. 256. (4) But there is another class of cases, in which the broker is not employed to negotiate a sale or purchase, but simply to bring two parties together and permit them to make their own bargain. In such case he is a mere middleman, and may recover an agreed compensation from either or both, though neither may know that compensation from the other is expected. This is on the ground that such an employment does not place the broker in a position where he can sacrifice the interests of his principal, and because he is not, as agent of the owner, bound to secure the best price obtainable, or, as agent of the buyer, to purchase at the least price at which the property can be bought, as in such case he has nothing to do with fixing the price. Neither party has contracted for his skill, knowledge or influence, and he stands entirely indifferent between them. Mechem, Ag. sec. 973; Ranney v. Donovan, 78 Mich. 318, 44 N. W. Rep. 276; Montross v. Eddy, 94 Mich. 100, 53 N. W. Rep. 916; Rupp v. Sampson, 16 Gray, 398; Orton v. Scofield (Wis.), 21 N. W. Rep. 261. The pivotal question in this case is whether the plaintiff brought himself within the rule last above stated, and whether the charge of the court fairly presented the question to the jury."

WILL—REVOCATION BY CUTTING OFF SIGNATURE.—It is held by the Court of Appeals of Kentucky, in Sander's Admr. v. Babbitt, that where the names of the testator and of the subscribing witnesses to a will were cut therefrom by testator's direction, and in his presence, with intention to revoke the will, there was a revocation, under Ky. St. § 4833, providing that a will may be revoked by destroying the signature thereto "with intent to revoke;" and, as the will was not re-executed as required by the statute after certain additions were made thereto, neither the original nor the new will is valid. The court said:

"Section 4833 of the Kentucky Statutes provides that: 'No will, or codicil, or any part thereof, shall be revoked unless under the preceding section, or by a subsequent will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is required to be executed, or by the testator, or some person in his presence, and by his direction, cutting, tearing, obliterating, canceling or destroying the same, or the signature thereto, with the intent to revoke.' This provision of our statute is a substantial reenactment of the English statute of frauds (St. 29 Car. II. ch. 3, § 6), and of the wills act of Victoria (St. 1 Vict. ch. 26, § 20); and in construing the latter in the case of Clarke v. Scripps, 2 Rob. Ecc. 567, the court said: 'It is to be observed that the "burning, tearing or otherwise destroying" the instrument must be done with the intention to revoke. It is not the mere manual operation of tearing the instrument or the act of throwing it in the fire, or of destroying it by other means, which will satisfy the requisites of the law. The act must be accompanied with the intention of revoking. There must be the animus as well as the act. Both must concur in order to constitute a legal revocation.' And in Giles v. Warren, L. R. 2 Prob. & Div. 401, a testator, under the false impression that his will was invalid, tore it up. Immediately afterwards, on reconsideration he collected the pieces, and placed them together among his papers of importance, and preserved them until his death. It was held that, as the act was done when not accompanied by an intention to revoke a valid will, it was ineffectual; and the will was admitted to probate. Lord Penzance said: 'The fact that a testator tears or destroys his will is not itself sufficient to revoke one properly executed; that is to say, the bare fact. If, for instance, he tears it, imagining it to be some other document, there would be no revocation, for there would be no intention of revocation. He must intend by the act to revoke something that he had previously done. There can be no intention to revoke a will, if a person destroys the paper under the idea, whether right or wrong, that it is not a valid will. Revocation is a term applicable to the case of a person canceling or destroying a document which he had before legally made. He does not revoke it if he does not treat it as being valid at the time when he

sets about to destroy it. According to the evidence, the testator, in consequence of some conversation he had, was under the impression that he had made no valid will, and, as being useless, he tore the document up and threw it on the fire. That is no revocation.' In the case of Doe v. Harris, 6 Adol. & E. 209, it was said: 'There can be no doubt that, if the name of the testator had been burnt or torn out, the revocation would have been as complete as if the will had been torn in twenty pieces. If this were not the case, it would lead to many absurd consequences.' Sir H. Jenner, in Hobbs v. Knight, 1 Burt. Ecc. 779, said: 'The question then comes to this: Whether this be or be not a destruction of the will. I consider the name of the testator to be essential to the existence of a will, and that, if that name be removed, the essential part of the will is removed, and the will destroyed.' In Semmes v. Semmes, 7 Har. & J. 388, it was held that: 'A will deliberately canceled without accident or mistake is revoked, though the testator afterwards intended to make a new will, but omits to do so.' In Youse v. Forman, 5 Bush, 337, it is said: 'If the testator cut or tore off the signature to this paper (his will), the law presumes it to have been done with the intent to revoke, but this intent may be fortified or rebutted by extrinsic evidence.'

"It is apparent that the controlling fact to be ascertained in passing upon the question of revocation is, what was the intention of deceased in having the signatures of himself and the attesting witnesses clipped from the paper? The signature is certainly an essential part of the will. Without it there can be no will, and, if it was the purpose of deceased to revoke his will, no more effectual means of doing so could have been resorted to, short of the total destruction of the paper."

INTERSTATE EXTRADITION.

1. *Scope of Article.*—The object of this article is to state in a thoroughly concise and clear manner the entire law upon this important subject, avoiding mere comment and discussion.

2. *Constitutional Provision.*—The foundation of the law upon the subject is the provision of art. 4, § 2, cl. 2, of the constitution of the United States, that "a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

3. *Statutory Provisions.*—The proceedings are regulated by U. S. Rev. Stats., §§ 5278-79. These sections provide that "whenever the executive authority of any State or territory demands any person as a fugitive from justice of the executive authority of any State or territory to which such person has fled, and produces a copy of an indictment found or affidavit made before a magistrate of any State or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or territory from whence the person so charged has fled, it shall be the duty of the executive authority of such State or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive such fugitive, and to cause the fugitive to be delivered to such agent when he shall appear." If no such agent appears within six months from the time of arrest, the prisoner may be discharged. The costs and expenses are to be borne by the demanding State. An agent so appointed who receives the fugitive into his custody is empowered to transport him to the State or territory from which he fled. Rescue of the fugitive from the agent is made punishable by fine or imprisonment.

4. *Provisions as to District of Columbia.*—By Rev. Stats. D. C., § 843, it is provided that in the case of fugitives found in the District of Columbia, application is to be made to the chief justice of the supreme court of the district, who causes fugitives to be apprehended and delivered up in the same manner as the executives of the States. Under the Act of March 3d, 1883 (22 Stat. L. 530), in the event of his absence or disability the senior associate justice acts.

5. *Offenders Against Federal Laws.*—Offenders against federal laws found within the United States need, of course, not be extradited or rendered up by State authority. Under § 1014, U. S. Rev. Stats., an offender against federal laws is merely arrested wherever found within the United States, and committed or bailed for trial before such court of the United States as has cognizance of the offense.

6. *Arrest to Await Requisition.*—In order to justify the arrest of a fugitive from justice of another State, it is not necessary that there

should, in the first instance, be formal extradition proceedings. The alleged offender may be arrested and detained for a reasonable time to await a requisition.[1] The machinery provided for the arrest of local offenders is available for the arrest of fugitives from another jurisdiction; and such arrest may be without a warrant if the offense is one for which there might be arrest without a warrant if it were committed in the jurisdiction where the offender is found.[2] This must not, however, be understood to apply to offenders against the laws of foreign governments, the federal government alone being authorized to deliver up alleged fugitives to foreign nations.[3]

7. *The Offense and the Flight.*—The constitution refers to all persons "charged in any State with treason, felony, or other crime, who shall flee from justice." The construction has generally been a liberal one. The term "crime" has been held to include everything that is the subject of a criminal charge under the laws of the demanding State, without exception as to the nature of the offense.[4] "Charged" has been construed to apply, in the broadest sense of the term, to the case, not only of a person merely accused of crime, but of a person convicted of crime and undergoing sentence, so that an escaped convict may be extradited.[5] "Flee from justice" imports not willful or conscious flight, but that the person demanded was actually present in the demanding State at the time of the commission of the alleged offense,[6] and that after the commission he left the demanding State.[7]

8. *The Demand.*—A demand in strict conformity with the statutory requirements is the essential foundation of the extradition proceedings.[8] Three things are necessary to precede and justify the warrant of extradition: A demand (requisition) from the executive of the State where the offense is said to have been committed, claiming the alleged offender as a fugitive from justice of said State; an accompanying copy of an indictment or affidavit; an accompanying certificate of the authenticity of such indictment or affidavit. It must thus appear to the executive of the State applied to, that the person demanded is substantially charged with the commission of crime against the demanding State, and that he is in fact a fugitive from justice of such State.[9] There must be either an indictment or an affidavit: no other accusation, however formal, can be substituted.

9. *The Indictment.*—An indictment is a written accusation presented on oath by a grand jury. A charge by information has been held not to be a compliance with the statutory requirement as to the production of "a copy of an indictment found."[10] It is only necessary that the indictment should substantially charge the commission of crime by the person demanded against the laws of the demanding State. The matter of its mere form and sufficiency, from the standpoint of technical pleading, is to be judged by the laws and determined by the tribunals of the demanding State.[11]

10. *The Affidavit.*—"An affidavit made before a magistrate of any State or territory" is the language of the statute. In the absence of an indictment, the production of a copy of a formal affidavit, with the demand for surrender, is essential.[12] An affidavit is a sworn statement of facts, not a mere "complaint."[13] It should set forth the facts and circumstances relied on to prove the alleged crime, under the oath or affirmation of some person familiar with them, who deposes from personal knowledge,[14] and directly charges the offense, an averment on information and belief being insufficient.[15] It has been held that there should be no less a degree of certainty in an affidavit than in an indictment; that if any distinction exists in this respect, the affidavit, usually the

[1] *In re* Fetter, 23 N. J. L. 311.
[2] State v. Taylor, 70 Vt. 1.
[3] United States v. Rauscher, 119 U. S. 407.
[4] Kentucky v. Dennison, 24 How. 66; *Ex parte* Reggel, 114 U. S. 642, 651 2.
[5] Drinkall v. Spiegel, 68 Conn. 441.
[6] *Ex parte* Reggel, *supra;* State v. Jackson, 36 Fed. Rep. 258; *Ex parte* Smith, Fed. Cas. 12,968.
[7] Streep v. United States, 160 U. S. 128; People v. Pinkerton, 17 Hun, 199, 77 N. Y. 245.
[8] *Ex parte* Morgan, 20 Fed. Rep. 298; *Ex parte* Hart, 63 *Ib.* 249; People v. Donohue, 84 N. Y. 438; State v. Richardson, 34 Minn. 115.
[9] Roberts v. Reilly, 116 U. S. 80; *Ex parte* Slauson, 73 Fed. Rep. 666; People v. Donohue, *supra.*
[10] *Ex parte* Hart, *supra.*
[11] *Ex parte* Reggel, *supra;* Pearce v. Texas, 155 U. S. 311; People v. Byrnes, 33 Hun, 98; Davis' Case, 122 Mass. 324; State v. O'Connor, 38 Minn. 243; *Ex parte* Sheldon, 34 Ohio St. 319; Barranger v. Baum, 103 Ga. 465.
[12] State v. Richardson, *supra*; *Ex parte* Pfitzer, 28 Ind. 450; *Ex parte* Thornton, 9 Tex. 635.
[13] State v. Richardson, *supra.*
[14] *Ex parte* Hart, *supra.*
[15] *Ex parte* Spears, 88 Cal. 640.

mere *ex parte* statement of the accuser, should be more full and specific than an indictment, which is the formal presentment upon due investigation of a sworn and impartial public body.[16] "Magistrate" means a judicial officer.[17] An affidavit is said to be made "before" such an officer, if the deposition is taken in his presence,[18] as by the clerk in the presence of a judge.[19]

11. *The Certificate.*—The copy of the indictment or affidavit produced with the demand must be "certified as authentic by the governor or chief magistrate" of the demanding State or territory. The certificate must be signed by such governor or chief magistrate.[20] It need not be a distinct document, attached to the copy of the indictment or affidavit, but the demand (signed by the executive) may refer to the accompanying copy and contain any added formula importing that the same is authentic.[21]

12. *The Warrant.*—The governor's warrant is directed (usually) to the peace officers, generally, of the several counties of the State, commanding that they arrest the alleged fugitive and deliver him to the agent of the demanding State. It must bear upon its face the evidence that it has been duly issued, and should recite (or set forth) the indictment or affidavit upon which founded.[22] It should thus appear that the governor was furnished with the required copy of the indictment or affidavit, with the addition of words importing that the same was "duly certified as authentic."[23] It should further appear that it has been "satisfactorily shown" (not "duly represented," merely) to the governor that the party is a fugitive from justice of the demanding State.[24] It has, however, been held sufficient that the warrant states facts which sufficiently import that the party is a fugitive from justice of the demanding State.[25] In Massachusetts, it has been held that a recital of the presentation of the demand of the party as a fugitive, and the accompaniment of a duly authenticated copy of an indictment or affidavit with the addition, "I am satisfied that the demand is conformable to law," is sufficient.[26] The executive may issue a new warrant, if a former one proved to be insufficient;[27] and, if he deems that the issue of a warrant was improvident, may revoke it at any time before the accused has actually been taken out of the State.[28]

13. *Discretion of Executive.*—The surrender of fugitives from justice as between the States is a matter of binding force and obligation.[29] If a case is presented which is clearly one contemplated by law, it is the duty of the governor applied to to comply with the requisition; but the duty is one of "imperfect obligation," there being no power vested anywhere to compel him to do so.[30] The governor himself must judge of the propriety of the extradition. In determining whether or not a case contemplated by law is presented he is vested with a certain degree of discretion,[31] and may and should inquire into and determine certain matters (par. 14) before issuing his warrant.

14. *Inquiry by Executive.*—The governor is, of course, not to issue his warrant unless it appears clearly from the face of the papers presented to him, that all essential prerequisites to extradition have been complied with.[32] He should withhold his warrant, unless it is established to his satisfaction, by proof beyond the mere certificate of the governor of the demanding State, that the party is in fact a fugitive from justice.[33] Resort by private parties to criminal process for the purpose of coercing the payment of a debt is deemed to be an abuse of process. If the governor is satisfied that the demand for rendition is made for any such ulterior and improper purpose, he may treat the proceedings as having been fraudulently procured for a purpose not contemplated by law and refuse to issue his

[16] People v. Brady, 56 N. Y. 182.
[17] *Ex parte* Powell, 20 Fla. 806; Kurtz v. State, 22 *Ib.* 36.
[18] Masterton v. State, 144 Ind. 240.
[19] *In re* Keller, 36 Fed. Rep. 681.
[20] Soloman's Case, 1 Abb. Pr. R. (N. S.) 347.
[21] *In re* Manchester, 5 Cal. 237; Kingsbury's Case, 106 Mass. 223; *Ex parte* Sheldon, *supra*; Hackney v. Welsh, 107 Ind. 253.
[22] *In re* Doo Woon, 18 Fed. Rep. 898.
[23] State v. Richardson, *supra*; *Ex parte* Stanley, 25 Tex. App. 372.
[24] *In re* Jackson, Fed. Cas. 7,125.
[25] *Ex parte* Stanley, *supra*.
[26] Kingsbury's Case, *supra*.
[27] *In re* Hughes, Phill. (N. Car.) L. 56, 66-7; Kurtz v. State, *supra*.
[28] State v. Toole, 69 Minn. 104.
[29] Lascelles v. Georgia, 148 U. S. 537, 545 6.
[30] Kentucky v. Dennison, *supra*; State v. Toole, *supra*.
[31] *Ex parte* Slauson, *supra*; State v. Toole, *supra*.
[32] *Ex parte* Slauson, *supra*.
[33] *Ex parte* Reggel, *supra*; *In re* Jackson, *supra*.

warrant, or, upon discovery of the circumstances after issue of the warrant, revoke it.[34]

15. *Remedy by Habeas Corpus.*—It has been said that, in regard to extradition, the writ of *habeas corpus* is indicated by law as the special remedy against misuse and abuse of that process.[35] The federal and the State courts have concurrent jurisdiction to inquire and determine upon *habeas corpus* as to the legality of the detention under extradition proceedings; but federal courts will ordinarily not entertain an application in advance of any proceedings in the State courts.[36] The application may be made in the courts of the demanding State, after the actual rendition,[37] as well as in the courts of the State in which the warrant issued.

16. *Scope of Inquiry.*—Upon *habeas corpus* the courts may, of course, inquire into the legal sufficiency of the warrant. In addition to this, it is the right and duty of the court to examine the preliminary papers upon which the warrant issued, if produced with the return, and judge and determine whether or not they are sufficient under the law to justify the warrant.[38] It has, however, been held, that the executive may, in his discretion, withhold these papers, the warrant alone being returned as the cause of detention, and that, in such case, the court can look only to the recitals in the warrant itself.[39] It is also a general rule that upon a proceeding by *habeas corpus* relief will be afforded, although the commitment or warrant of detention, even if it be in the nature of final process, is in due form, if there was no jurisdiction in the officer or tribunal under whose precept the party is imprisoned, and that the want of jurisdiction may be shown by extrinsic proof.[40] It has, accordingly, been held that although only the warrant is produced, the relator may traverse the return and show that in fact no copy of an indictment or affidavit emanating from the executive of the demanding State was produced prior to the issue of the warrant.[41] Inquiry may also be made into the question of flight, involving the fact of the actual presence of the accused within the demanding State at the time of the commission of the alleged offense,[42] unless there has been an actual surrender, and the jurisdiction of the courts of the demanding State has attached.[43] The identity of the person arrested with the person named in the warrant may be inquired into;[44] probably, also, the question of the identity of the person named in the warrant with the person demanded, for the requirement of a demand in due form as a prerequisite to the issue of a warrant is not gratified, if the person named therein is not the person demanded. Perhaps, if the arrest was made, without indictment, upon a mere affidavit, the question of probable cause of guilt may be inquired into;[45] but ordinarily the mere question of guilt or innocence cannot be examined.[46]

17. *Fraud and Abuse of Process.*—Within limits not well defined, questions involving fraud and abuse of process may be examined. State v. Jackson[47] arose upon a state of facts which may be succinctly stated as follows: A, residing at Chicago, Illinois, offered a horse for sale by advertisement in a Chicago newspaper. B, residing at Chattanooga, Tennessee, read the advertisement, and a trade was consummated between the parties wholly by correspondence. The horse was shipped by rail to Chattanooga and the price remitted by mail to Chicago. B, after trial of the horse, concluded that the animal was worthless and employed a detective, who made affidavit before a magistrate in Tennessee, that A had obtained money from B in Tennessee and fled from justice of that State. A was thereupon extradited to Tennessee, where he applied for his release upon *habeas corpus*, which was granted. The court held, upon inquiry into the facts, that the relator was not a fugitive from justice, within the meaning of the law, not having been in the demanding

[34] *Ex parte* Slauson, *supra*; Work v. Corrington, 34 Ohio St. 64; State v. Toole, *supra*; *In re* Juhu, 2 Moore, Extrad. §§ 585, 615.

[35] *Ex parte* Slauson, *supra*.

[36] Whitten v. Tomlinson, 160 U. S. 231.

[37] State v. Jackson, 36 Fed. Rep. 258.

[38] Roberts v. Reilly, *supra*; *Ex parte* Hart, *supra*; People v. Brady, *supra*.

[39] *In re* Scrafford, 59 Hun, 320.

[40] Elliott v. Piersol, 1 Pet. 328, 340; Windsor v. McVeigh, 93 U. S. 274; People v. Cassels, 5 Hill, 164; Divinee's Case, 11 Abb. Pr. R. 90; Clarke's Case, 12 Cush. 320; *In re* Davis, 38 Kan. 408; *In re* Golding, 57 N. H. 148; *In re* Patswald, 5 Okla. 789; *Ex parte* O'Brien, 127 Mo. 477.

[41] *Ex parte* Devine, 74 Miss. 715.

[42] *In re* Cook, 49 Fed. Rep. 833.

[43] Eaton v. West Virginia, 91 Fed. Rep. 760.

[44] *In re* Leary, Fed. Cas. 8,162.

[45] *In re* Roberts, 24 Fed. Rep. 132, 134.

[46] Roberts v. Reilly, *supra*; People v. Brady, *supra*; Kurtz v. State, *supra*; *In re* Mohr, 73 Ala. 503.

[47] *Supra*.

State at the time of the commission of the alleged offense, and that the governors of the two States had been imposed upon by a false oath. *Ex parte* Slauson[48] originated in a prosecution arising out of a partnership between A and B, upon a statement of accounts between them in the settlement of their business, which had proven unsuccessful, and a balance was due by A to B. There was no charge or pretense of fraud, at this or any other time, by any person, until very shortly before the institution of the prosecution in question. C bought the debt of A to B, and A removed with his family to Virginia. From some apparently sinister and peculiar motive, the circumstances relating to which the court did not deem proper to be ventilated, C became very anxious for A's return to Tennessee, resorting to gross threats and coercive measures to secure that end. He brought suit in Virginia upon the claim, as upon an ordinary contract, and very shortly thereafter, upon his affidavit charging A with "fraudulent appropriation of money," to-wit, the sum found due upon settlement of accounts between A and B, and with flight from justice, a requisition was issued by the governor of Tennessee, upon which the governor of Virginia issued his warrant for the arrest of A, who was thereupon apprehended. Upon *habeas corpus* sued out by A in Virginia, the court inquired fully into all these facts and circumstances and ordered his release. The court held, that the relator had a right to show the groundless and oppressive character of the proceedings against him. It was found that the charge of crime was wholly unfounded and the entire prosecution a fraudulent device on the part of C to secure A's return to Tennessee. The court considered that such a perversion of the process provided for the extradition of "fugitives from justice" could not be tolerated, and that it would be a mockery of justice if the facts could not be fully inquired into upon *habeas corpus*.

18. *Effect of Decision.*—The effect of a discharge upon *habeas corpus* is, to relieve the party from liability to further imprisonment for the same cause,[49] and a discharge of one arrested under a warrant of extradition precludes any further confinement under the same precept.[50] A judgment remanding the party is no bar to a subsequent application or applications,[51] and this doctrine has been applied to extradition cases.[52]

19. *Trial in Demanding State.*—It has now been definitely settled, after much controversy, that a trial may be had in the demanding State for a different offense from that for which the accused was demanded and surrendered.[53]

Baltimore, Md. LEWIS HOCHHEIMER.

[48] *Supra.*
[49] *Ex parte* Jilz, 64 Mo. 205.
[50] *In re* White, 45 Fed. Rep. 237.
[51] Bradley v. Beetle, 153 Mass. 154; Bell v. State, 4 Gill (Md.), 301.
[52] People v. Brady, *supra.*
[53] Lascelles v. Georgia, *supra.*

CONTRACT TO DEVISE — SPECIFIC PERFORMANCE.

BARRETT v. GEISINGER.

Supreme Court of Illinois, April 17, 1899.

1. If a contract to devise is in the alternative, or its construction doubtful, it will not be specifically enforced.

2. An agreement by a father to devise land to his son's children in consideration of the son's payment to the father for life of a fixed sum as rent, will not be specifically enforced where such sum was only one-third the rental value of the land, and it was further stipulated that the rents paid should be refunded on breach of the agreement to devise, although at the time of the agreement the son claimed equitable ownership under a previous agreement whereby the father was to devise the land to the son in consideration of contribution to his support.

PHILLIPS, J.: A bill in chancery was filed by John W. Barrett, the father of these appellants, against John Barrett and Sarah Geisinger, to cancel certain conveyances from John Barrett to Sarah Geisinger, and to restrain him from making further conveyances or devises of the land in controversy, and also to establish complainant's title thereto. The complainant in that case was the son of the respondent John Barrett, and Sarah Geisinger, the co-respondent, was a sister of the complainant in that bill. Issue was formed, and on hearing the bill was dismissed, and an appeal was had to this court, where the decree was affirmed. The case is Barrett v. Geisinger, 148 Ill. 98, 35 N. E. Rep. 354, where all the facts of this bill are stated, and which will not be repeated in full. The complainants in this case were not parties to that adjudication. After the determination of that case, these complainants filed their bill against Sarah and David Geisinger, praying for a cancellation of the deeds made by John Barrett to Sarah Geisinger, and that the latter be required to convey to complainants the land in controversy, and that the title thereto be declared to be in complainants, etc. Issue was joined on this latter bill, and on hearing a decree

was entered dismissing the bill, and adjudging the costs against the complainants, and they prosecuted an appeal to this court.

It appears that John Barrett was the owner of about 160 acres of land, and about 1866 made an agreement with his son John W. Barrett that if the latter would give him $75 a year, one-half the flour and pork necessary to keep himself and wife in provisions, and one-half the feed for a horse, at his death the said John W. should have the land in controversy. Some time after this, John Barrett made a similar agreement with his son James Barrett for the other 80, therein described, and he took possession of it, and held possession until his death in 1873. Shortly after the death of James Barrett, Sarah Geisinger took possession of this 80 under some arrangement with her father, and has held it ever since. For the purpose of carrying out the agreement with John W., his father made a will in 1868, and another in 1874, devising the 80 to him; but in 1887 he made another will, devising the 80 to the children of John W. Barrett. Disagreements having arisen between John Barrett and his son John W. Barrett, an attempt to settle the same was made, and on June 8, 1889, a lease was made by the former to the latter of the land in controversy for and during the life of the lessor, which lease contained these provisions: "And the party of the second part, in consideration of the leasing of the premises as above set forth, and in consideration of the covenants and agreements hereinafter contained on the part of the party of the first part to pay as rent for the same to the party of the first part, at Compton, Illinois, the sum of $100 per annum, payable as follows: Fifty dollars on the first day of December, A. D. 1889, and $50 on the first day of each succeeding December and July for and during the term of this lease, and to pay all taxes levied or imposed upon the said premises during the term of this lease, and to keep the fences in a reasonable state of repair. And it is mutually agreed by and between the parties to this lease that the party of the second part enters into this lease in consideration of the provisions of the will of the party of the first part bearing date the 22d day of February, A. D. 1887, and now in the hands of W. I. Guffin, of Compton, Illinois, by which provisions said premises are devised to the children of the party of the second part. And it is further agreed that said will shall not be changed in any manner nor for any purpose whatever, but shall remain the last will and testament of the said party of the first part to the day of his death; and, in case said party of the first part shall violate this clause, then all rent paid under the terms of this lease shall be refunded to the party of the second part by the party of the first part, his heirs or personal representatives. And it is further mutually understood and agreed that said party of the second part claims to be the equitable owner of said premises, subject to his contributing to the support, as heretofore, of the party of the first part; that said party of the second part executes this lease for the purpose of securing the payment of the $100 per year, as above set forth, and for the further consideration expressed in the preceding clause. And it is further expressly agreed that neither party to this lease waives any right to or claim on the premises aforementioned existing at the time of the signing of this instrument. The covenants herein contained shall extend to and be binding upon the heirs, executors and administrators of the parties to this lease." At the time of making this latter lease the will of 1887 was placed in the hands of one W. I. Guffin, with the following written statement of John Barrett: "To W. I. Guffin: In consideration of the lease and settlement this day entered into between John W. Barrett and myself, you are hereby instructed to take the custody of my will, dated February 22, 1887, and accompany this, and keep the same until my decease, and not to deliver it in the meantime to myself even, or to any other person whomsoever. John Barrett, Sr. Dated June 8, A. D. 1889."

The claim for relief under this bill must rest on the fact of the execution of the will of 1887, the placing it in the hands of Guffin on June 8, 1889, and the agreements contained in the lease of June 8, 1889. By the lease John W. Barrett became a tenant for life at a stipulated rent for the land in controversy. The evidence shows the rent to be paid was much less than the rental value of the land. John W. Barrett having claimed the lands, and in the lease had it recited that he claimed to be the equitable owner thereof, sought to have that equitable ownership decreed to him, but that question was decided adversely to him in Barrett v. Geisinger, *supra*. Contracts by which one undertakes to make a will devising property to another are valid, and may be enforced. In Bolman v. Overall, 80 Ala. 451, 2 South. Rep. 624, it was held: "All the authorities agree that one may, for a valuable consideration, renounce the absolute power to dispose of his property by will to a particular person, and that such contract may be enforced in the courts after his decease, either by an action for its breach against his personal representative, or, in a proper case, by bill in the nature of specific performance against his heirs, devisees or personal representative. 'The validity of such agreements,' as remarked by Mr. Freeman in a recent note on this subject to the case of Johnson v. Hubbell, 10 N. J. Eq. 332, 'is supported by an unbroken current of authorities, both English and American.' Wright v. Tinsley, 30 Mo. 389; Parsell v. Stryker, 41 N. Y. 480. The principle upon which courts of equity undertake to enforce the execution of such agreements is referable to its jurisdiction over the subject of specific performance. It is not claimed, of course, that any court has the power to compel a person to execute a last will and testament carrying out his agreement to bequeath a legacy, for this can be done only in the lifetime of the testator, and no breach

of the agreement can be assured so long as he lives, and after his death he is no longer capable of doing the thing agreed by him to be done. But the theory on which the courts proceed is to construe such an agreement (unless void under the statute of frauds, or for other reason) to bind the property of the testator or intestate so far as to fasten a trust on it in favor of the promisee, and to enforce such trust against the heirs and personal representatives of the deceased, or others holding under them charged with notice of the trust. It is in the nature of a covenant to stand seised to the use of the promisee, as if the promisor had agreed to retain a life estate in the property, with remainder to the promisee in the event the promisor owns it at the time of his death, but with full power on the part of the promisor to make any *bona fide* disposition of it, during his life, to another otherwise than by will." In Johnson v. Hubbell, 10 N. J. Eq. 322, it was held: "There can be no doubt but that a person may make a valid agreement binding himself legally to make a particular disposition of his property by last will and testament. The law permits a man to dispose of his own property at his pleasure, and no good reason can be assigned why he may not make a legal agreement to dispose of his property to a particular individual, or for a particular purpose, as well by will as by conveyance, to be made at some specified future period, or upon the happening of some future event. It may be unwise for a man to embarrass himself as to the final disposition of his property, but he is the disposer, by law, of his own fortune, and the sole and best judge as to the manner and time of disposing of it. A court of equity will decree the specific performance of such an agreement upon the recognized principles by which it is governed in the exercise of this branch of its jurisdiction." Rivers v. Rivers' Exrs., 3 Desaus. Eq. 195; Jones v. Martin, 3 Anstr. 882, 19 Ves. 66, 3 Ves. 412; Podmore v. Gunning, 7 Sim. 644, 654. The validity of an agreement to devise this land was recognized by this court in Stephan v. Reynolds, *supra*. In Emery v. Darling (Ohio), 33 N. E. Rep. 715, it was held: "A promise to make a will in favor of a party, supported by a sufficient consideration, and in due form of law, is a valid contract, and, if not made, may be specifically enforced against the heirs of the promisor. It is supported by an almost unbroken current of authorities, both English and American." It is stated in 3 Pars. Cont. p. 406: "It is obvious that an agreement to make a certain disposition of property by last will is one which, strictly speaking, is not capable of a specific execution—not in the party's lifetime—because any testamentary instrument is by its nature revocable, and after his death it is no longer possible to make his last will. Yet it has been held to be within the jurisdiction of equity to do what is equivalent to a specific performance of such an agreement, by requiring those upon whom the legal title has descended to convey the property in accordance with its terms. And the court will not allow this post-mortem remedy to be defeated by any devise or conveyance in the lifetime inconsistent with the agreement."

Numerous other authorities might be cited sustaining the same rule. Like all other contracts there must be an adequate consideration for such contract, or it is not enforceable. Fry (Spec. Perf. p. 105) says: "Such a contract is regarded with suspicion, and will not be sustained except upon the strongest evidence that it was founded upon a valuable consideration, and was the deliberate act of the decedent." Beach, in his first volume on Contracts (section 4), says: "Upon this ground a promise by one to make a particular testamentary disposition of property in favor of another is not binding, and cannot be enforced unless founded upon a sufficient consideration." Bisp. Eq. § 372, says: "And, in the first place, it is a fundamental principle that the extraordinary remedy of specific performance will not be administered save upon an application which is based on a valuable consideration." In section 373: "It is essential to specific performance that the consideration should be valuable. A merely good consideration, such as natural love and affection, or the performance of a moral duty, will not be sufficient." And in section 374: "In some cases the adequacy of the consideration has been inquired into. Cases may occur in which the court will exercise discretion, and will refuse to lend the aid of the chancellor to the enforcement in special of a hard and unconscionable bargain." Such contracts must not be unconscionable, inequitable or unjust, for no court of equity will enforce specific performance of a contract of that character, as its enforcement rests in the sound legal discretion of the court. Hamilton v. Harvey, 121 Ill. 469, 13 N. E. Rep. 210; Crandall v. Willig, 166 Ill. 233, 46 N. E. Rep. 755. In this latter case it is held: "It rests in the sound legal discretion of the court whether it will or not compel the specific performance of a contract. True, that discretion must be exercised according to settled principles of equity, and not arbitrarily. Allen v. Woodruff, 96 Ill. 11. But, to entitle the complainant to a decree, the contract must be founded on a sufficient consideration, and must be reasonable, fair and just." A contract in relation to the making of a will, which can have specific performance decreed, must be absolute in its terms. It must not be in the alternative, or doubtful as to its construction. It is said by Fry, in his work on Specific Performance (section 115): "The question always is, what is the contract? Is it that one certain act shall be done, with a sum annexed, whether by way of penalty or damages, to secure the performance of this very act? Or is it that one of two things shall be done at the election of the party who has to perform the contract, namely, the performance of the act or the payment of the sum of money? If the former, the fact of the penal or other like sum being annexed will not prevent the court enforcing performance

of the very act, and thus carrying into execution the intention of the parties. If the latter, the contract is satisfied by the payment of a sum of money, and there is no ground for proceeding against the party having the election, to compel the performance of the other alternative." Waterman (Spec. Perf. Cont., § 23) says: "If the agreement be construed as giving to the party the option to do the act or pay a certain sum, equity will not interfere. In determining the question the court will have regard to the whole agreement, and not merely look at the language expressing the penal sum. It may treat the word 'penalty' as meaning liquidated damages, or the words 'liquidated damages' as meaning a penalty. It may do this notwithstanding the contract be alternative in its form, if the court can clearly see that the contract is to perform one of the alternatives." And in § 24: "If the agreement would be unreasonable unless the person stipulating to pay the sum had an option, this will be a strong circumstance for regarding the agreement as alternative." This doctrine has been adopted in this State, Lyman v. Gedney, 114 Ill. 388, 29 N. E. Rep. 282, where the court says (page 398, 114 Ill., and page 283, 29 N. E. Rep.): "It is only where the contract stipulates for one of two things in the alternative—the performance of certain acts or the payment of a certain amount of money in lieu thereof—that equity will not decree a specific performance of the first alternative," citing Wat. Spec. Perf. Cont. §§ 22, 23, and Pom. Cont. § 50.

By the provisions of the lease, which is the contract sought to be enforced, "neither party to this lease waives any right to or claim on the premises existing at the time of the signing of this instrument." The lease also contains this provision: "And it is mutually agreed by and between the parties to this lease that the party of the second part enters into this lease in consideration of the provisions of the will of the party of the first part, bearing date the 22d day of February, A. D. 1887, and now in the hands of W. I. Guffin, of Compton, Illinois, by which provisions said premises are devised to the children of the party of the second part. And it is further agreed that said will shall not be changed in any manner, nor for any purpose whatever, but shall remain the last will and testament of the said party of the first part to the day of his death, and in case said party of the first part shall violate this clause, then all rents paid under the terms of this lease shall be refunded to the party of the second part by the party of the first part, his heirs or personal representatives." The provisions of this lease in the way of refunding rent are to be determined from the contract itself and the subject-matter. Both parties to that contract claimed the land in controversy. In determining whether the agreement is to be construed as giving an option to do the act or to pay a certain sum, and taking into consideration that the lease was exceedingly in favor of the lessee, being at much less than the rental value, and that in reality no consideration passed to the lessor or testator for the bequest, it is unreasonable to suppose the intention of the parties was that the lessor or testator did not reserve an option to himself to regard the agreement in the alternative—to refund the rent or allow the terms of the will to be carried out. It would be unconscionable and unjust to otherwise construe the provision. We find no sufficient consideration for this agreement. It does not exist, because a desired lease is taken at one-third the rental value, and is not otherwise sought to be shown. From all the facts in this record, and taking into consideration what is said in Barrett v. Geisinger, *supra*, we are of the opinion the circuit court committed no error in dismissing the bill, and its decree is affirmed.

Decree affirmed.

NOTE.—*Contracts to Devise—When Valid.*—It is entirely competent for a person to make a valid agreement binding himself to make a particular disposition of his property by will. Such contracts, if founded upon a sufficient consideration, are enforceable against heirs, devisees or representatives, as though the deceased obligator were a party to the suit. Manning v. Pippen, 86 Ala. 357, 11 Am. St. Rep. 46; Carlisle v. Fleming, 1 Harr. (Del.) 421; Maddox v. Rowe, 23 Ga. 431, 68 Am. Dec. 535; Wallace v. Long, 105 Ind. 525, 55 Am. Rep. 222; Mundorff v. Howard, 4 Md. 459; Frisby v. Parkhurst, 29 Md. 58, 96 Am. Dec. 503; Wright v. Wright, 31 Mich. 380; Leonardson v. Hulin, 64 Mich. 1; Wright v. Tinsley, 30 Mo. 389; Gupton v. Gupton, 47 Mo. 37; Sutton v. Hayden, 62 Mo. 101; Johnson v. Hubbell, 10 N. J. Eq. 332, 66 Am. Dec. 773; Van Duyne v. Vreeland, 12 N. J. Eq. 142; Davison v. Davison, 13 N. J. Eq. 246; Rhodes v. Rhodes, 3 Sandf. Ch. (N. Y.) 279; Stephens v. Reynolds, 6 N. Y. 459; Parsell v. Stryker, 41 N. Y. 480; Shakespeare v. Markham, 10 Hun (N. Y.), 311; McClure v. McClure, 1 Pa. St. 378; Logan v. McGinnis, 12 Pa. St. 32; Taylor v. Mitchell, 87 Pa. St. 518, 30 Am. Rep. 383; Izard v. Middleton, 1 Desaus. Eq. (S. Car.) 116; Rivers v. Rivers, 3 Desaus. Eq. (S. Car.) 190, 4 Am. Dec. 609; Logan v. Wienholt, 1 C. & F. 611; Needham v. Smith, 4 Russ. 318; Lester v. Foxcroft, Colles, 108; Fortescue v. Hennah, 19 Ves. 67; Walpole v. Orford, 3 Ves. 402; Gorlmere v. Batteson, 2 Vent. 353; Jones v. Martin, 3 Anst. 882. In Johnston v. Hubbell, 10 N. J. Eq. 332, 66 Am. Dec. 773, the court, by William, Ch., said: "There can be no doubt but that a person may make a valid agreement binding himself legally to make a particular disposition of his property by last will and testament. The law permits a man to dispose of his own property at his pleasure; and no good reason can be assigned why he may not make a legal agreement to dispose of his property to a particular individual, or for a particular purpose, as well by will as by conveyance, to be made at some specified future period, or upon the happening of some future event." See Rivers v. Rivers, 3 Desaus. Eq. (S. Car.) 190, 4 Am. Dec. 609; Jones v. Martin, 3 Aub. 882; Podmore v. Gurnsey, 7 Sim. 644; Parsell v. Stryker, 41 N. Y. 480. In consideration of the services of a son in managing his father's estate, the father promised to bequeath him certain sums of money, and in exchange for a lot of land conveyed to him by the son, to devise two specified lots of his own to him. The will to the above effect was invalid for want of three witnesses, and as against the heirs at law of the testator. Held, that a bill for specific performance as to the land would lie. Maddox

v. Rowe, 23 Ga. 431, 68 Am. Dec. 535. A father conveyed land to his daughter. The deed named a money consideration, although in fact no money was paid, the real consideration being an agreement to support her parents during their lives. Held, that a court of equity would compel the performance of the agreement and charge the support on the land. Watson v. Smith, 7 Oreg. 448.

Terms Must be Clear, Certain and Unambiguous.—A contract to devise, which is sought to be specifically enforced, must be clear, certain and unambiguous in its terms, and must either be admitted by the pleadings or proved with a reasonable degree of certainty. It is not sufficient to show that a contract of some kind exists between the parties, and that it has in whole or in part been performed by the complaining party, but all the material terms of the contract as alleged must be substantially proved or admitted. Barrett v. Geismyer, 148 Ill. 98.

Terms Must be Complied With by Party Seeking to Enforce.—Where the complainant had entered into a contract with his father by which he agreed to support his father and mother during their lives, pay all debts owing by the former at his death, and pay certain specified sums to certain of his co-heirs, in consideration of which he was to become the owner of the farm on which he then resided with his father, and it appeared that at the time of the filing of his bill for a specific performance of the contract his mother was still living, and might live for many years, and that he had not paid one of the heirs the sum he agreed to pay, held that, until he paid such sum and supported his mother during her natural life he had not clothed himself with the right to demand a deed. Cronk v. Trumble, 66 Ill. 428. The owner of land, being old and infirm, made a contract with his daughter and son-in-law that if they would come and reside with them, maintain and support him and his wife during their lives, and improve the land, he would, by his will, devise the same to them, upon condition the son in-law should, within two years after the death of the father-in-law, or that of his wife, in case she should survive him, pay each of his other children a certain sum, but instead thereof, the owner devised the land to his other children. Held, that the son-in-law was not entitled to specific performance against the devisees without paying the other children the sum so secured to them by contract. Weingaertner v. Probst, 115 Ill. 412. So a contract for the sale or transfer of land by will to a party, in consideration that such party would support the vendor or testator and his wife for and during their respective lives, will not be specifically enforced when such party refused to perform his undertaking to support the vendor and his wife. The party seeking specific performance of a contract for the conveyance of land must have performed his part of it. If he refuses or neglects to do so, he cannot compel specific performance of it. Weingaertner v. Probst, 115 Ill. 412.

Cannot be Annulled by One With Consent of the Other.—When one party to a contract undertakes to annul it without the consent of the other, such act does not impair its obligation. It can always be enforced. People v. Supervisors, 47 Ill. 256; Myers v. Gross, 59 Ill. 436. Carmicheal v. Carmicheal, 72 Mich. 76, 16 Am. St. Rep. 528, was a suit based upon a mutual agreement between husband and wife by which the two were to make a certain testamentary disposition of their several estates, each in favor of their children as to the residue. The husband died, having fully performed his part of the agreement, and the wife accepted her portion thereunder by his will. It was held that the other parties in interest could compel her to perform the agreement, and restrain her from the execution of any will in violation thereof. See also Bird v. Pope, 73 Mich. 483.

D. M. MICKEY.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACCIDENT INSURANCE — Pleading. — An averment that insured's death resulted solely from physical bodily injuries proceeding from and inflicted by external, violent and accidental means, producing immediate death, sufficiently shows an accidental death, within a policy requiring a claim to arise as the direct result of physical bodily injury undoubtedly proceeding from external, violent and accidental means.—RAILWAY OFFICIALS' & EMPLOYEES' ACC. ASSN. v. ARMSTRONG, Ind., 53 N. E. Rep. 1037.

2. ADMINISTRATION — After-Discovered Property — Rights of Parties.—Where the administration of a succession has been closed, and many years afterwards the heirs of the deceased, suing as heirs, recover property, a creditor of the deceased will not be permitted to reopen the succession, and bring the property thus recovered under administration, as belonging to the succession, and have himself appointed administrator.—SUCCESSION OF ARONSTEIN, La., 25 South. Rep. 982.

3. ADVERSE POSSESSION—Railroads—Station Grounds—Limitation.—The acquiring of land by a railroad for right of way and station grounds is an appropriation to a public use, within Rev. St. 1889, § 6772, preventing the running of limitations against land so appropriated.—HANNIBAL & ST. J. R. CO. v. TOTMAN, Mo., 51 S. W. Rep. 412.

4. APPEAL—Law of the Case.—A judgment or decree of this court upon a writ of error or appeal is conclusive, as to all matters involved in it, upon all parties served with process in it, even though the service of process to answer in the court below were voidable.—UNITED STATES BLOWPIPE CO. v. SPENCER, W. Va., 33 S. E. Rep. 342.

5. ASSIGNMENTS FOR CREDITORS—Preference by Partners.—Payments by insolvent partners, out of partnership assets, to their individual creditors, with intention to prefer them to the exclusion of others, will operate as an assignment for the benefit of creditors. —CHEEK V. GRAHN, Ky., 51 S. W. Rep. 311.

6. ASSIGNMENT FOR CREDITORS — Recording—Property in Different Counties.—An assignment, for the benefit of creditors, of property situate in two counties, recorded in only one of the counties, does not become operative, as against the creditors of the assignor, as to property in the other county, until recorded in that county, under Code, § 1004, requiring deeds of assignment to be recorded in the county where the property is situate.—ROGERS V. BAILEY, Ala., 25 South. Rep. 909.

7. ATTACHMENT—Attachment Bond—Attorney's Fees. —Attorney's fees may be recovered as part of the damages in an action on an attachment bond, to the extent that they were for services rendered in defending the attachment alone, as distinguished from the action itself.—MCCLURE V. RENAKER, Ky., 51 S. W. Rep. 317.

8. ATTACHMENT—Wrongful Attachment — Damages. —A landlord is liable in damages for suing out a writ to enjoin his tenant from selling or removing property on the premises for the purpose of harassing him, though he had a lien on the property.—BEACH V. WILLIAMS, Iowa, 79 N. W. Rep. 898.

9. ATTACHMENT—Wrongful Attachments- Release of Damages.—Where creditors of a debtor employed the same attorney, and separate attachments on their debtor's property are levied on the creditors' claims, they are not joint tort-feasors, where the attachments were improperly levied, so that a release as to one of them would discharge the other, as against a claim for damages by the attachment debtor.—MILLER V. BECK, Iowa, 79 N. W. Rep. 344.

10. ATTORNEY AND CLIENT—Contingent Fees—Champerty.—A client assigned one-third of his claim to each of two attorneys, in consideration of their mutual services in its prosecution, of which each was to give an equal amount, and one of them agreed to pay all necessary expenses and costs. Held, that the latter obligation rendered the contract void for champerty, and, the obligation of both being mutually dependent on each other, neither attorney could recover thereon. —GEER V. FRANK, Ill., 53 N. E. Rep. 965.

11. BANKRUPTCY—Dissolution of Liens.—Where actions are begun in a State court, and writs issued and levied on property of an insolvent debtor, within four months before the institution of proceedings in involuntary bankruptcy against him, the trustee is entitled to recover possession of such property from the sheriff holding the same under the levy; and the court of bankruptcy has jurisdiction to order the surrender of the property on summary petition by the trustee.—IN RE FRANCIS-VALENTINE CO., U. S. D. C., N. D. (Cal.), 93 Fed. Rep. 953.

12. BANKRUPTCY—Provable Debts—Rent.—A lease for a term of years, reserving rent payable in monthly installments, is terminated by the adjudication of the lessee as a bankrupt during the term; and the landlord has no provable claim against the tenant's estate in bankruptcy for the rent which would have accrued under the lease after the date of such adjudication.— IN RE JEFFERSON, U. S. D. C., D. (Ky.), 93 Fed. Rep. 948.

13. BANK CHECK—Priority over Attachment.—A check drawn before, though not presented until after, an attachment lien was created on the deposit, has priority over the attachment.—WINCHESTER BANK V. CLARK COUNTY NAT. BANK, Ky., 51 S. W. Rep. 315.

14. BENEFICIAL INSURANCE ASSOCIATIONS—Sick Benefits.—A certificate of membership in a beneficial insurance association provided for payment of a certain sum as sick benefits. In his application, made a part of the certificate, insured, in answer to questions, stated his weekly wages, and agreed that indemnity for sickness should not exceed the amount thereof, and that if his monthly dues were not paid at stated times he should be suspended from receiving benefits until reinstated. Held, that where insured became sick while in good standing, and the association became indebted to him for sick benefits in excess of subsequent dues during sickness, the failure to pay such dues did not forfeit the membership.—COLUMBIAN RELIEF FUND ASSN. V. HOPPER, Ind., 53 N. E. Rep. 1051.

15. BILLS AND NOTES—Void Renewal.—Where persons whose names were signed as sureties to a renewal note without their authority pleaded *non est factum*, whereupon plaintiff filed an amended petition setting up the original note, and asking judgment thereon in the event the renewal should be adjudged invalid, an answer pleading payment of the original note was not good; it appearing that the execution of the renewal note was relied on as a payment.—BRIGHT V. FIRST NAT. BANK, Ky., 51 S. W. Rep. 442.

16. BOND—Forfeiture—Damages.—In an action on a penal bond, the amount recoverable is not absolutely limited by the penalty. If the damages, to secure which the bond was given, exceed the penalty and draw interest, the penalty will draw interest also, and the recovery may include both the penalty and such interest.—WHEREATT V. ELLIS, Wis., 79 N. W. Rep. 416.

17. BUILDING AND LOAN ASSOCIATIONS—Powers.—A building and loan association organized on the mutual plan, under Rev. St. 1879, ch. 21, art. 9, has no power to contract that shares of its stock pledged by a borrowing member shall reach their par value within a fixed time; such power not being contemplated by the statute governing such associations, and its exercise being likely to give borrowing members a share of the profits that would be unequal to that of the other members.—SCHELL V. EQUITABLE LOAN & INVESTMENT ASSN. OF SEDALIA, Mo., 51 S. W. Rep. 406.

18. CARRIERS OF GOODS—Duty to Furnish Cars.— Where a contract to furnish cars to a shipper was made with an agent having no authority to make it, and he did not report it to the carrier, and the carrier did not learn of it, it was not binding on the carrier.— GULF, C. & S. F. RY. CO. V. DINWIDDIE, Tex., 51 S. W. Rep. 353.

19. CARRIERS—Passengers—Alighting at Wrong Station—Damages.—Where a passenger having a ticket to L is told by the conductor that the train is at L, when in fact it is at a station 12 miles therefrom, and leaves the car, the wrong being manifestly caused by mistake, the passenger is only entitled to compensatory damages.—CLEVELAND, C., C. & ST. L. RY. CO. V. QUILLEN, Ind., 53 N. E. Rep. 1024.

20. CONSTITUTIONAL LAW—Criminal Procedure—Information Instead of Indictment. — The fourteenth amendment to the constitution of the United States does not limit the power of State governments in the prosecution of criminals to any particular mode of procedure in the selection of its jurors or manner of conducting its trials, but does require that such trials shall be conducted in due course, according to the prescribed forms and judicial procedure of the State for the protection of the individual rights and liberties of its citizens.—IN RE MAXWELL, Utah, 57 Pac. Rep. 412.

21. CONTRACT—Building Contract—Owner's Delegation of Control to Husband.—The silence and non-attendance of the owner of property on which a building is being erected, while her husband took full control of all matters involved in carrying out a contract for the construction of the building for her, are sufficient evidence of an understanding between them that he should do so, and she is bound by his acts.—LAYCOCK V. PARKER, Wis., 79 N. W. Rep. 327.

22. CONTRACTS — Specific Performance — Consideration.—Under Civ. Code, § 3391, refusing specific performance if defendant has not received adequate consideration for his contract, and if it is not just and reasonable, plaintiff must aver and prove the consideration and reasonableness of the contract.—WINDSOR V. MINER, Cal., 57 Pac. Rep. 386.

23. CORPORATIONS—Liability for Torts of Agents—Scope of Employment.—A declaration, in an action against a corporation for personal injuries, which alleges that defendant employed certain detectives to investigate an alleged robbery, and that in the course of such employment such detectives, with other persons procured by them, committed an assault on plaintiff for the purpose of compelling him to confess to the commission of the robbery, and inflicted the injuries sued for, states sufficient facts to connect the defendant with the injury, and to charge it with liability therefor; the means employed by its agents in the investigation being left to their discretion, in the exercise of which they were within their authority. A ratification or repudiation of their acts by defendant after they were committed, and plaintiff's right of action had accrued, would be immaterial.—SOUTHERN EXP. CO. v. PLATTEN, U. S. C. C. of App., Fifth Circuit, 93 Fed. Rep. 936.

24. CORPORATIONS—Transfer of Property—Rights of Creditors.—Where a plan for reorganization is entered into by the stockholders and secured creditors of an insolvent corporation, and is carried out, pursuant to which all the property of the corporation is sold by foreclosure and otherwise, and transferred to the new corporation, whereby the stockholders of the old corporation retain their interest and rights, and by virtue thereof are either stockholders in the new corporation, or are otherwise provided for, this is a fraud on an unsecured creditor of the old corporation, so that she may hold the new corporation for her claim.—CENTRAL OF GEORGIA RY. CO. v. PAUL, U. S. C. C. of App., Fifth Circuit, 93 Fed. Rep. 878.

25. CRIMINAL LAW—Desecration of Sabbath—Baseball Playing.—An affidavit for the issuance of a warrant for violation of Acts 1885, p. 127 (Burns' Rev. St. 1894, § 2087), prohibiting any person from playing baseball, "where a fee is charged," on Sunday, charging that defendant, on a certain day, being the first day of the week, commonly called Sunday, unlawfully engaged in playing a game of baseball, where an admittance fee was charged, and paid by the spectators, was not defective nor failure to set out the name of some person paying, since the word "fee" was simply used to distinguish free exhibitions from those where an admittance was charged; and hence an averment that an "admittance fee" was charged was sufficient.—STATE v. HOGRIEVER, Ind., 53 N. E. Rep. 921.

26. CRIMINAL LAW — Homicide—Evidence.—Though accused be on trial for manslaughter only, his threats against deceased may be shown, notwithstanding they tend to prove murder; it being competent for the State to develop all the facts connected with the case.—TURNER v. STATE, Tex., 51 S. W. Rep. 366.

27. CRIMINAL LAW—Manslaughter—Negligence.—Negligence is an element of manslaughter in the second degree only when the act causing death is not *per se* unlawful, but is negligently done. Hence it does not enter into the offense of shooting another with a pistol without malice or intent to kill.—BENJAMIN v. STATE, Ala., 25 South. Rep. 917.

28. CRIMINAL LAW—Murder—Poison.—Under Code, § 4728, making a killing by means of poison murder in the first degree, one who kills by poison cannot be convicted of murder in the second degree.—STATE v. BERTOCH, Iowa, 79 N. W. Rep. 378.

29. CRIMINAL LAW—Perjury.—Under Pen. Code, § 966, providing that an information for perjury must allege that the court or person before whom the alleged false oath was taken had authority to administer it, but that it need not set forth his commission or authority, it is unnecessary to state the facts giving him jurisdiction.—PEOPLE v. DE CARLO, Cal., 57 Pac. Rep. 883.

30. CRIMINAL PRACTICE—Coercion of Employees—Indictment.—Acts 1893, p. 146 (Burns' Rev. St. 1894, § 2302), provides that any person, officer or member of a firm or corporation who coerces or attempts to coerce employees by discharging or threatening to discharge them because of their connection with a lawful labor organization, etc., shall be guilty of a misdemeanor, etc. Held, that an indictment in the language of the statute, but failing to show in what respect the employee was coerced, or the attempt was made to coerce him, was insufficient.—STATE v. DARLINGTON, Ind., 53 N. E. Rep. 925.

31. CRIMINAL PRACTICE—Indictment — Separate Offenses.—Cutting and stabbing with intent to murder, and wounding less than mayhem, while separate and distinct offenses, may be cumulated, in one presentment, provided each is charged in a separate count.—STATE v. THOMPSON, La., 25 South. Rep. 954.

32. DEEDS—Evidence.—Where a deed described a lot as shown by a town map, which at the time the deed was made had been executed, but was not recorded until some days thereafter, parol evidence was properly admitted to show that no other map of such town, except the one referred to, had ever been recorded in that county.—ZIMPLEMAN v. STAMPS, Tex., 51 S. W. Rep. 341.

33. DEEDS—Filling Blanks—Effect as to Title.—Defendant claimed title by a warranty deed made by plaintiff's mother to defendant's grantor. The name of the grantee was left blank in the deed, with authority to L to fill in the name of such grantee as he might elect. L's agent, by mistake, inserted the name of F, instead of the name of defendant's grantor, as intended, but upon discovery of the mistake the name of defendant's grantor, was immediately inserted. Held, that the momentary insertion of the name of F by mistake, being without authority either from plaintiff's mother or L, conferred no title upon F, and detracted nothing from the rights of defendant's grantor, but the insertion of the name of defendant's grantor for the first time made the instrument complete.—THUMMEL v. HOLDEN, Mo., 51 S. W. Rep. 404.

34. DEED—Grantees.—A deed is not invalid because not naming the grantees, but describing them as the heirs of certain persons.—HILL v. JACKSON, Tex., 51 S. W. Rep. 357.

35. DESCENT AND DISTRIBUTION—Per Capita or Per Stirpes.—Where a testator leaves his estate to his two brothers for life, with remainder to be "divided between my heirs at law," the heirs, consisting of children and grandchildren of deceased brothers and sisters, take *per stirpes*, and not *per capita*.—JOHNSON v. BODINE, Iowa, 79 N. W. Rep. 348.

36. DIVORCE—Alimony Pendente Lite.—Under Const. art. 7, § 6, limiting the supreme court's jurisdiction to revising the final decisions of the circuit courts, and Hill's Ann. Laws, § 500, providing that in a divorce suit an allowance for alimony may be made at any time after commencement of the suit, and before a decree therein, on appeal in such a suit the supreme court cannot grant alimony *pendente lite;* such order not being necessary or proper in aid of its appellate jurisdiction.—O'BRIEN v. O'BRIEN, Oreg., 57 Pac. Rep. 374.

37. EASEMENT—Right of Way—Evidence.—On an issue as to whether defendants had a right of way over plaintiff's lot, either appurtenant to their own land or because the place was a public way by prescription, the question asked the owner of an adjacent lot, whether defendants asked permission to cross it, was properly excluded, unless it clearly appeared that his lot was in precisely the same relation to defendants and the public as the plaintiff's lot, and that the line of travel passed over both.—GAY v. TOWER, Mass., 53 N. E. Rep. 999.

38. EJECTMENT—Evidence.—Where a strip of plaintiff's land was, by agreement, allowed to remain inclosed with that of an adjacent tract, which was conveyed to others, the conveyance, with evidence that grantee occupied the strip in the same manner as did the grantor, is admissible, in ejectment, as showing possession by plaintiff under those who were occupying for him.—GAGE v. EDDY, Ill., 53 N. E. Rep. 1008.

39. EMINENT DOMAIN—Property Subject to be Taken.—Land which has been acquired by a gas company under the right of eminent domain, and for many years devoted by it to public use, cannot be taken by another company for an additional railroad track, in the absence of imperative necessity, merely because it is more economical or convenient than another route.—SCRANTON GAS & WATER CO. v. NORTHERN COAL & IRON CO., Penn., 43 Atl. Rep. 470.

40. EMINENT DOMAIN—Right to Compensation—Injunction.—Under Const. art. 14, § 7, providing that an owner of property shall be compensated before it is taken by eminent domain, the owner may enjoin the taking of his property before compensation, regardless of any remedy at law by way of compensatory damages.—CITY COUNCIL OF MONTGOMERY v. LEMLE, Ala., 25 South. Rep. 919.

41. EMINENT DOMAIN—Damages—Pleading.—Where plaintiffs are entitled to recover damages to an interest owned by them in land at the time the same was appropriated by a railroad company, the mere fact that they also seek to recover damages to an interest owned by their ancestor in the land at the time of such appropriation does not render the complaint bad on demurrer.—INDIANAPOLIS & V. R. CO. v. PRICE, Ind., 53 N. E. Rep. 1018.

42. EVIDENCE—Parol Evidence—Deeds.—A deed conveyed land bounded by the bank of a mill race. The race had two banks—one which immediately formed the race, and another which was thrown up to prevent an overthrow. Held, that parol evidence was competent to show which bank was meant by the description.—STAMPHILL v. BULLEN, Ala., 25 South. Rep. 928.

43. FEDERAL COURTS—Jurisdiction.—A bill to annul a city ordinance fixing rates to be charged by a water company, which are claimed to be so unreasonably low as to amount to a practical taking of the company's property mortgaged to complainant, without due process of law, etc., in violation of the United States constitution, presents a federal question.—CONSOLIDATED WATER CO. v. CITY OF SAN DIEGO, U. S. C. C. of App., Ninth Circuit, 93 Fed. Rep. 849.

44. FEDERAL COURTS—Power to Permit Amendments.—A federal court has power to retain jurisdiction of a suit by the dismissal of parties who are not indispensable, but whose presence would deprive the court of jurisdiction, or by permitting amendments to supply necessary allegations as to citizenship of parties.—GROVE v. GROVE, U. S. C. C., D. (Kan.), 93 Fed. Rep. 865.

45. FEDERAL COURT—Suit Against Stockholders to Recover Assessments.—A receiver of an insolvent Iowa bank cannot maintain a suit in equity in a federal court against a number of stockholders to recover assessments levied under the State statute, as the liability of the defendants is several, arising on their contracts of subscription, each of which is a separate obligation, and is a legal, and not an equitable, liability.—TOMPKINS v. CRAIG, U. S. C. C., E. D. (Penn.), 93 Fed. Rep. 885.

46. FRAUDULENT CONVEYANCES.—Where property is transferred in fraud of the grantor's creditors, the facts that claims against the grantor in excess of the value of the property were canceled by the transaction, and that the grantee has retained possession of the property for a number of years, treating it as his own, do not purge the transaction of fraud.—CALDWELL v. WALKER, Miss., 25 South. Rep. 929.

47. FRAUDULENT CONVEYANCES—Chattel Mortgages.—Chattel mortgages given to secure valid debts are not rendered void by the making of a voluntary assignment within 60 days thereafter, where there was no evidence that the debtors contemplated the making of the assignment when the mortgages were given.—RITZINGER v. EAU CLAIRE NAT. BANK, Wis., 79 N. W. Rep. 410.

48. FRAUDULENT CONVEYANCES—Declarations of Grantor as Evidence.—Declarations of the grantor are not admissible against the grantee to show that a conveyance was executed with intent to defraud creditors.—BOLI v. IRWIN, Ky., 51 S. W. Rep. 444.

49. HOMESTEAD—Exemption of Insurance.—The money becoming due, after loss, on an insurance policy insuring a homestead for the benefit of the owner, is not exempt from garnishment in an action on a note secured by a mortgage on the homestead, where the money for which the note was given was loaned to the mortgagor for the purpose of, and was used in, buying the homestead, under Const. 1894, art. 9, § 3, which provides that the homestead of any resident who is the head of a family shall be exempt from the lien of any judgment or sale on execution, except such as may be rendered for the purchase money or for specific lien.—ACRUMAN v. BARNES, Ark., 51 S. W. Rep. 319.

50. HOMESTEAD—Marshaling Securities.—Though a debtor was not entitled to a homestead as against a vendor's lien, yet as the vendor permitted the proceeds, which were sufficient, after setting apart a homestead, to satisfy his lien, to be applied to the payment of inferior liens, as against which the debtor was entitled to a homestead, he cannot subject the homestead to pay the balance of his claim.—RALLS v. PRATHER, Ky., 51 S. W. Rep. 318.

51. HUSBAND AND WIFE—Actions Between.—Under Code 1873, § 2204, providing that, should either the husband or wife obtain possession of the property belonging to the other before or after marriage, the owner thereof may sue therefor, or for any right growing out of the same, as if unmarried, a wife has no right of action against her husband on his personal contract.—HEACOCK v. HEACOCK, Iowa, 79 N. W. Rep. 358.

52. HUSBAND AND WIFE—Community Property—Liabilities.—Where the husband, for the community, cultivates a plantation, the separate property of the wife, the indebtedness incurred in such cultivation is a liability of the community, and the wife cannot be individually held for same.—COURREGE v. COLGIN, La., 25 South. Rep. 942.

53. HUSBAND AND WIFE—Note Made by Wife.—A note, signed by a married woman, payable to the order of her husband, and indorsed by him and others, is void, though the note, after being indorsed, is passed to a third person in payment of a debt of the wife.—NATIONAL GRANITE BANK v. WHICHER, Mass., 53 N. E. Rep. 1004.

54. INJUNCTION—Performance of Contract—Intervention.—If a contractor be enjoined from performing his contract pending litigation against him to have it adjudged void, and his subcontractor, who has no rights independent of those of his principal, intervenes and moves the court for permission to proceed with his contract, the question for decision is, should the injunction against the principal stand, and if that be decided in the affirmative the motion should be denied.—EHLERT v. KINDT, Wis., 79 N. W. Rep. 413.

55. INSURANCE—Divisibility of Contract.—Where a policy recites a gross premium paid for insurance in the sum of $1,750 "on the following described property:" $700 on building, $1,000 on stock of goods therein, and $50 on fixtures therein, a breach of the iron-safe clause does not preclude a recovery for the building and fixtures.—HANOVER FIRE INS. CO. v. CRAWFORD, Ala., 25 South. Rep. 912.

56. "INTEREST"—Definition—Usury.—Under Rev. St. art. 3097, which defines "interest" as the compensation allowed by law or fixed by parties to a contract for the use or forbearance "or detention" of money, a stipulation that, on failure to repay a loan at maturity, the debtor shall pay for its detention a rate in excess of the legal rate of interest, is void.—PARKS v. LUBBOCK, Tex., 51 S. W. Rep. 322.

57. INTEREST—Demand—Where no demand is alleged, a note payable on demand bears interest only from the date of the filing of the petition.—COOKE v. CLARK'S COMMITTEE, Ky., 51 S. W. Rep. 316.

58. JOINT TORT-FEASORS.—Where several contractors are employed in reconstructing a building, each owes the other's employees the duty of reasonable care in conducting its operations, and if either negligently causes its fall, and the consequent injury of such employees, it is liable, although other agencies may have contributed.—OLSON v. PHŒNIX MFG. CO., Wis., 79 N. W. Rep. 409.

59. JUSTICES OF THE PEACE—Appeal—Amount.—Under Hill's Ann. Laws, § 2117, authorizing an appeal from a justice's court where the sum in controversy exceeds $10, a defendant against whom a judgment is rendered for less than $10 may appeal, though he filed no counterclaim, where the complaint demanded more than $10.—TROY v. HALLGARTH, Oreg., 57 Pac. Rep. 374.

60. LIFE INSURANCE—Assignment of Policy—Insurable Interest.—The assignment of a policy of life insurance to one who has no insurable interest in the life insured is void, as against public policy.—SCHLAMP v. BERNER'S ADMR., Ky., 51 S. W. Rep. 312.

61. LIFE INSURANCE—Contracts.—A stipulation in a contract for life insurance that, if the policy is not satisfactory to insured, it will be taken back, and a note executed by insured therefor returned, does not render the contract invalid. It is analogous to a sale subject to approval of the article sold.—PARKER v. BOND, Ala., 25 South. Rep. 898.

62. LIMITATION—Appeal Bonds.—Limitations begin to run against a right of action on an appeal bond from entry of judgment on the appeal, it not being necessary to attempt collection of the judgment before suing on the bond.—TAYLOR v. SMITH, Ind., 53 N. E. Rep. 1048.

63. LIMITATION OF ACTIONS—Cumulation of Disabilities.—Under the statute of limitations in force in the District of Columbia, which limits the time within which action to recover real property may be brought to 20 years, but provides that, if the person to whom the title or right of entry accrues or descends shall be at the time under coverture or other disability, the action may be brought at any time within 10 years after the death of such person or the removal of the disability, the disabilities of successive owners of the right of action cannot be cumulated, to prevent the running of the statute, and where a right of action accrued in favor of a married woman, who remained under coverture until her death, but action was not brought until more than 20 years after the accrual of the right, and more than 10 years after her death and that of her husband, the action was barred, notwithstanding the fact that her daughter, to whom the right descended, was also under coverture, and remained so until within less than 10 years before the action was brought.—DAVIS v. COBLENS, U. S. S. C., 19 S. C. Rep. 882.

64. LIMITATION OF ACTIONS—Construction of Statutes—New Promise.—Statutes of limitation are regarded favorably as statutes of repose, and a writing to give a new cause of action or stay the bar of the statute for a renewed period must contain an express promise to pay a pre-existing debt or an acknowledgment of a present debt under such circumstances that a promise to pay may be inferred. A mere acknowledgment of the debt is insufficient.—BULLION & EXCHANGE BANK v. HEGLER, U. S. C. C., N. D. (Cal.), 93 Fed. Rep. 890.

65. MARRIAGE — Separation — Adultery. — A marital separation by mutual agreement, even if followed by adultery, was not sufficient to disendow the wife, under 13 Edw. I., until the husband, by offering to take her back, had withdrawn from the contract of separation, and the wife had thereupon refused such offer.—NORTON v. TUFTS, Utah, 57 Pac. Rep. 409.

66. MARRIED WOMAN—Estoppel—Burden of Proof.—The lender who lends money to a married woman is not required to inquire into the purpose of the loan, when she is duly authorized by the court to borrow a specific amount.—SAUFLEY v. JOUBERT, La., 25 South. Rep. 934.

67. MASTER AND SERVANT—Liability of Master.—A company contracted with defendants to construct and set up in its factory machinery for its operation. When it arrived, it was unloaded by employees of the company, but the time the employees were employed in handling it was charged to defendants. Employees of the company directed the work, and superintended the construction of a derrick for lifting the machinery, in the operation of which plaintiff's intestate was killed. Defendants had nothing to do with the direction of the work. Held, that defendants were not liable, since intestate was the servant of the company.—BAUER v. RICHTER, Wis., 79 N. W. Rep. 404.

68. MASTER AND SERVANT—Negligence. — The head block of a log carriage in a sawmill was set by turning a wheel at the rear end of the carriage, which pushed the log in position to be cut. This duty was properly performed by standing on the floor of the mill, but it might be performed by riding on the carriage, and turning the wheel from that position. Held, that it was a dangerous place in which to set a boy 14 years old to work, though it might not have been such to a person of mature years.—MARBURY LUMBER CO. v. WESTBROOK, Ala., 25 South. Rep. 914.

69. MECHANICS' LIENS — Estoppel — Husband and Wife.— Where a husband and wife are in possession of land, title to which is in the wife and of record, and a builder contracts with the husband to erect a building and furnish materials, on the representation of the husband that he is the owner, and the wife, knowing this, encourages the transaction, and does not disclose her title, she is guilty of such fraud as estops her from setting up her title against the mechanic's lien of the builder.—BASTRUP v. PRENDERGAST, Ill., 53 N. E. Rep. 995.

70. MECHANICS' LIENS—Payment.—A material-man is entitled to enforce a mechanic's lien, though the contractor, who purchased the materials, failed to procure security against mechanics' liens, as he had agreed with the owner to do.—CARTER v. MARTIN, Ind., 53 N. E. Rep. 1066.

71. MORTGAGES—Foreclosure Sale—Pleading.—Where a bill brought by the heir of a mortgagor to redeem from a mortgage alleges certain fraudulent acts by the mortgagee in connection with the sale of the equity of redemption by the administrators of the mortgagor, the bill is not demurrable on the ground that the particulars of the fraud are not alleged, as the right to redeem exists, independent of fraud in the administrator's sale.—RAINEY v. MCQUEEN, Ala., 25 South. Rep. 920.

72. MORTGAGE—Liens— Priorities. — Where a mortgage is executed and recorded before the material for which a mechanic's lien is claimed was furnished, the mortgage lien is superior, since under Burns' Rev. St. 1894, § 7258, the lien of a mechanic relates to the time when the first material for which it is claimed is furnished.—ZEHNER v. JOHNSTON, Ind., 53 N. E. Rep. 1080.

73. MUNICIPAL CORPORATIONS—Acts of Officers.—A city is not liable for the action of its aldermen in taking cognizance of charges against the health commissioner, and putting him to expense in defending his official acts for the public good. If the action of the aldermen was malicious, they would be liable individually, but not the city.—KEMPSTER v. CITY OF MILWAUKEE, Wis., 79 N. W. Rep. 411.

74. MUNICIPAL CORPORATIONS — Defects in Street—Damages.—A city is liable for defects in a street outside of so much of the street as is customarily used by the public, though it may have left the street in its natural condition as it was when opened to public use.—LAMB v. CITY OF CEDAR RAPIDS, Iowa, 79 N. W. Rep. 366.

75. MUNICIPAL CORPORATIONS—Illegality of Incorporation.—In an action by a contractor to foreclose an assessment lien, the legality of the city's incorporation cannot be attacked.—WILLARD v. ALBERTSON, Ind., 53 N. E. Rep. 1078.

76. MUNICIPAL CORPORATIONS — Powers — Notes. —A city may execute a note for a just and legal obligation. —CITY OF MINERAL WELLS v. DARBY, Tex., 51 S. W. Rep. 351.

77. MUNICIPAL CORPORATIONS — Statutes — Opening Streets.—In a resolution of a city council of intention to open a street a description clearly defining the boundaries of the land deemed necessary to be taken for such street is sufficient, though excepting therefrom all land held by the city and State as open ways. —COHEN v. CITY OF ALAMEDA, Cal., 57 Pac. Rep. 377.

78. MUNICIPAL CORPORATIONS — Use of Streets for Telephone Line.—Under Const. § 163, providing that no telephone company shall be permitted to erect its poles along the streets of a city without the consent of the proper legislative body of the city being first obtained, "but when charters have been heretofore granted conferring such rights, and work has in good faith been begun thereunder, the provisions of this section shall not apply," where a city council had, without legislative authority, prior to the adoption of the present constitution, attempted to grant the right to erect telephone poles and wires along and over the streets of the city, the city has the right to compel the removal of such poles and wires erected without the consent of the city council after the adoption of the constitution.—EAST TENNESSEE TEL. CO. v. CITY OF RUSSELLVILLE, Ky., 51 S. W. Rep. 308.

79. MUNICIPAL CORPORATIONS — Waterworks — Contracts.—A contract for constructing a water tunnel provided that compensation for the tunnel in rock should be a certain sum per lineal foot, and for rock excavation, over and above cost of lineal foot of tunnel, a certain sum per cubic yard. The specifications attached provided that when the tunnel was partly in earth and partly in rock the contractor would be paid a price per cubic yard for rock excavation over and above the unit price per lineal foot of tunnel in earth. Held, that the additional compensation for rock excavation was to be paid where the tunnel was wholly through rock as well as where it was partly through rock and partly through earth.—CITY OF CHICAGO v. DUFFY, Ill., 53 N. E. Rep. 982.

80. NEGLIGENCE— Defective Sidewalk — Liability of Abutting Owner.—An abutting property owner may be liable directly to one injured by a defective sidewalk. —MINTZER v. HOGG, Penn., 43 Atl. Rep. 465.

81. NEGLIGENCE — Frightening Horses — Proximate Cause.—Where a team is frightened at a broken buggy overturned beside the highway, in such a position as would be likely to frighten reasonably quiet horses, the act of one leaving it there a few days before, in a position not likely to produce such an effect, cannot be considered the proximate cause of an injury resulting from the running away of the team.—KUMBA v. GILHAM, Wis., 79 N. W. Rep. 325.

82. NEGLIGENCE—Willful Wrong—Pleading.—When a complaint, in an action for personal injuries, alleges that defendant "negligently" committed the act, plaintiff cannot invoke the rule that a complaint, in an action for an injury caused by a willful wrong, need not allege plaintiff's freedom from contributory negligence.—GARTIN v. MEREDITH, Ind., 53 N. E. Rep. 936.

83. PARTNERSHIP—Accounting—Dissolution.— Where a partnership has ceased to do business, and no settlement of its affairs has been had, and one partner has all the funds, and has appropriated part of them, and has purchased property in his own name with them, and refuses to account, the other is entitled in equity to an accounting, and to have a lien on the property so purchased, and a dissolution of the firm. —REESE v. MCCURDY, Ala., 25 South. Rep. 918.

84. PRINCIPAL AND AGENT—Right of Agent to Draw Away Principal's Customers. — An agent who has ceased to represent his principal and gone into the same line of business for himself may lawfully solicit the future business of his former principal's customers.—PROCTOR & COLLIER CO. v. MAHIN, U. S. C. C., N. D. (Ill.), 93 Fed. Rep. 875.

85. PRINCIPAL AND SURETY—Contracts—Negligence. —A contractor, engaged to carry the United States mails, agreed, among many other things, to convey on the driver's seat of each wagon, a postal employee. The contract was sublet for a considerable less sum, but the subcontractor agreed only to carry the mails, and that for failure therein he should be liable "to the original contractor" for certain liquidated damages. Held that, where a postal employee was injured while riding on the wagon, he cannot recover against the sureties on the sucontractor's contract, since there is no privity of contract between himself and such sureties.—LAWTON v. WAITE, Wis., 79 N. W. Rep. 321.

86. PUBLIC LANDS—Suit to Cancel Patent—Mineral Character of Land.—In a suit by the United States for the cancellation of a patent to land issued under a railroad grant, on the ground that the land was mineral, the burden rests on the complainant to overcome the presumption in favor of the patent by satisfactory evidence, not only that the land was known mineral land at the time the patent was issued, but that it is chiefly valuable for mineral purposes. Evidence that gold placer mining had formerly been carried on in a stream on the tract, but that it had been abandoned as worked out prior to the date of the patent, and that neither at that time nor since had there been any mines on the land producing mineral and capable of being worked at a profit, is insufficient, as is also evidence of the mineral character of adjoining land.—UNITED STATES v. CENTRAL PAC. R. CO., U. S. C. C., N. D. (Cal.), 93 Fed. Rep. 871.

87. QUIETING TITLE—Partition.—A bill to cancel a deed for actual fraud cannot be maintained as one to quiet title, where there is no averment that complainant is in possession, and no obstacle is shown that would prevent the assertion of complainant's rights by an action of ejectment.—BROWN v. HUNTER, Ala., 25 South. Rep. 924.

88. RAILROAD COMPANY—Covenant to Fence.—The actual loss in rental value, resulting from the breach of an agreement by a railroad company, in consideration of a grant of a right of way, to build and maintain a sufficient stock fence, though the only damage shown, is recoverable.—LAKE ERIE & W. R. CO. v. GRIFFIN, Ind., 53 N. E. Rep. 1042.

89. RAILROAD COMPANY—Fires—Evidence.—Where a locomotive causing the fire in suit is identified, evidence of other fires by other engines should not be considered in determining whether the engine causing the fire was improperly constructed, handled or repaired, and, where such evidence was admitted, it was error to refuse to charge the jury to disregard it.—CHICAGO I. & L. RY. CO. v. GILMORE, Ind., 53 N. E. Rep. 1078.

90. RAILROAD COMPANY — Regulation of Carriage Stand—Monopolies.—A depot corporation, under its charter power to make regulations governing its depot, cannot discriminate between the owners of public vehicles by allowing one to stand and solicit business before the entrance to its depot, and exclude others.—INDIANAPOLIS UNION RY. CO. v. DOHN, Ind., 53 N. E. Rep. 987.

91. RAILROAD COMPANY — Switchmen—Negligence.— A switchman may assume that a yardmaster has done his duty in removing obstructions, though the rules of his employment require him to see to it that the premises on which he is working are in proper condition for the services required; and his failure to observe an obstruction near the track, which caused him to fall from the footboard of a moving engine, causing his death, is not, as a matter of law, contributory negligence, precluding a recovery.—LOUISVILLE & N. R. CO. v. BOULDIN, Ala., 25 South. Rep. 903.

92. RELEASE—Insanity—Fraud.—In a suit to enforce a release from liability for injuries received by an employee, whose administratrix has brought an action to recover for such injuries, and who by cross bill asks

that complainant be enjoined from setting up the release as a defense in the action at law, because of the insanity of the employee, the court will not entertain jurisdiction of the question of insanity, and set the release aside, as it can be set up by replication to the plea of release in the action at law.—HOBOKEN FERRY CO. v. BALDWIN, N. J., 43 Atl. Rep. 417.

93. RELIGIOUS SOCIETIES—Church—Departure From Doctrines.—A new pastor of a church taught new doctrines, and a well known leader of the faction professing them called on all who were willing to accept the innovations to take the front seat; this being done expressly to settle misunderstandings as to belief. Shortly thereafter three leading members who refused to tolerate the new doctrines were notified to be at church and confess, or they would be expelled, and, on their failing to do so, the elders dropped their names. No specific charges were given, though demanded; the pretext for the members' dismissal being that they were walking disorderly. Held to show that the new doctrines were made the test of membership, though no formal resolutions were adopted.—CHRISTIAN CHURCH OF TAMA v. CARPENTER, Iowa, 79 N. W. Rep. 375.

94. SALE—Conditional Sales.—To maintain an action for the price of machinery sold under a conditional sale, it is not essential that there should be a formal act of delivery, and specific waiver of the right to reclaim the property, where vendees are in actual possession of the property, since the completion of the contract operated as a delivery.—SMITH v. BARBER, Ind., 53 N. E. Rep. 1014.

95. SALE—Contract—Signing.—A contract of conditional sale is subscribed by the parties, as required by Rev. St. § 2317, so as to entitle it to be filed with the city clerk, where signed by the parties by their agents.—TUFTS v. BRACE, Wis., 79 N. W. Rep. 414.

96. SALES—Written Contract — Verbal Representations.—The buyer cannot have an abatement of the price on account of a breach of verbal representations made at the time of the sale, or because the thing bought was less valuable than the parties supposed, where the contract is in writing, and there is no fraud.—WORLAND v. SECREST, Ky., 51 S. W. Rep. 445.

97. SLANDER—Justification.—An employer who suddenly, upon the spur of the moment, and in a spirit of anger, denounces an employee as a thief, and attributes to him other vile epithets, in a public place, and in the presence of many persons, is liable in damages for slander; this, notwithstanding the employer had been justly annoyed by a quarrel that had arisen between the employee and his manager. Their quarrel constituted no just ground for the employer's slanderous utterances.—POISSENET v. REUTHER, La., 25 South. Rep. 937.

98. TAXATION—Imported Goods—Original Packages.—Goods imported, and remaining in the original boxes or cases or wrappings in which shipped, are held to be, until sold by the importer, not subject to assessment and taxation for State and municipal purposes; being exempt under article 1, § 10, par. 2, of the federal constitution.—MAY v. CITY OF NEW ORLEANS, La., 25 South. Rep. 959.

99. TAXATION—Recovery by Purchaser—Limitation.—The statute limiting a tax purchaser's right to recover the land begins to run when his right to a deed accrues, though he does not take one until thereafter, if the fee owner then occupies the land, and has done so since the sale; and the running of the statute is not interrupted by a change in the fee title during the period of limitation.—GALLAGHER v. HEAD, Iowa, 79 N. W. Rep. 387.

100. TAX LIENS—Limitations—Constitutional Law.—The terms of article 156 of the constitution of 1898 relate to the future, and their effect is prospective only, and they cannot be given a retrospective operation, the result of which would be a remission of a large amount of delinquent taxes, in the absence of any provision clearly indicative of that purpose on the part of the framers of the organic law.—SUCCESSION OF PARHAM, La., 25 South. Rep. 947.

101. TENANCY IN COMMON—Adverse Possession.—A conveyance by a tenant in common, in possession, purporting to convey the entire estate, under which the grantee goes into possession, claiming title to the entire estate, constitutes a bar to the recovery of the premises by a co tenant, where such possession and claim of title are continued for the period of limitations.—GRUBBS v. LEYENDECKER, Ind., 53 N. E. Rep. 940.

102. TENANCY IN COMMON—Partition—Mortgage.—A mortgage of an interest of a tenant in common, given pending a suit for partition, while invalid as against a purchaser at the partition sale, creates a valid lien on the mortgagor's share of the proceeds.—HUFFMAN v. DARLING, Ind., 53 N. E. Rep. 939.

103. TRUSTS—Fraudulent Conveyance — Validity.—A conveyance of land by a husband and wife in trust for the benefit of the wife and minor children, though voluntary, or made with intent to defraud the husband's existing creditors, cannot be impeached by subsequent creditors with record notice thereof.—MONDAY v. VANCE, Tex., 51 S. W. Rep. 346.

104. TRUST—Judgment—Conclusiveness.—A *cestui que trust* consenting to a judgment modifying the trust is bound thereby, where the trust as modified is valid, though as originally created it was invalid because making the performance of the trust discretionary with the trustee, as prohibited by Civ. Code, § 857.—IN RE LORENZ'S ESTATE, Cal., 57 Pac. Rep. 881.

105. TRUST DEED—Foreclosure—Limitations.—A suit to foreclose a deed intended as a mortgage, given to secure a loan presumed to be due immediately or on demand, and not evidenced by any written promise to pay, is barred in four years from the execution of the deed, by Code Civ. Proc. § 337, providing that an action on any contract, obligation, or liability founded on a written instrument shall be brought within four years.—NEWHALL v. SHERMAN, Cal., 57 Pac. Rep. 387.

106. WATER COMPANY — Contract with City—Mandamus.—Under a contract by a city with a water company by which the latter has to furnish and keep in working order 15 fire hydrants for a period of 10 years at a rental of $112 per annum, the city to have the right at any time within 10 years "to take any additional number of fire hydrants at the annual rental of one hundred dollars each," the city, ordering additional hydrants, is liable for their rent for the remainder of the period of 10 years, and not merely until the order is rescinded.—STATE v. CITY OF PHILLIPSBURG, Mont., 57 Pac. Rep. 405.

107. WATERS AND WATER COURSES—Fixing Rates—Constitutional Law.—Courts will not interfere with the collection of rates established under legislative sanction, unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation, as, under all the circumstances, is just, both to the owner and the public.—SAN DIEGO LAND & TOWN CO. v. CITY OF NATIONAL CITY, U. S. S. C., 19 S. C. Rep. 804.

108. WILLS—Construction—Life Estates.—A devise of all testator's property, real and personal, during life, to use as the devisee may see fit, "except that such use shall not be construed at any time to mean that the (devisee) shall sell any of the real estate, but is used here for the purpose of giving the (devisee) the right to change or modify the specific bequests hereinafter made," merely gives a life estate in the realty.—IN RE STUMPENHOUSEN'S ESTATE, Iowa, 79 N. W. Rep. 376.

109. WILLS—Influence—Suit to Contest. — Where a testator was not affected by insane delusions, the fact that he disinherited certain of his children because of influence exerted by their stepmother will not invalidate the will.—CLAUSSENIUS v. CLAUSSENIUS, Ill., 53 N. E. Rep. 1006.